(April 9, 2002 Draft)

California Regional Water Quality Control Board

Santa Ana Region

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FACT SHEET

April 26, 2002 (Board Meeting date)

ITEM: 13

SUBJECT: Waste Discharge Requirements for the San Bernardino County Flood Control District (SBCFCD), the County of San Bernardino, and the Incorporated Cities of San Bernardino County within the Santa Ana Region, Storm Water Runoff Management Program, San Bernardino County, Order No. R8-2002-0012 (NPDES No. CAS618036)

I. INTRODUCTION

The 1972 Clean Water Act (CWA) established the National Pollutant Discharge Elimination System (NPDES) permit program to regulate the discharge of pollutants from point sources to waters of the United States (U.S.). Since then, considerable strides have been made in reducing conventional forms of pollution, such as from sewage treatment plants and industrial facilities, through the implementation of the NPDES program and other federal, state and local programs. The adverse effects from some of the persistent toxic pollutants (DDT, PCB, TBT) were addressed through manufacturing and use restrictions and through cleanup of contaminated sites. On the other hand, pollution from land runoff (including atmospheric deposition, urban, suburban and agricultural) was largely unabated until the 1987 CWA amendments. As a result, diffuse sources, including urban storm water runoff, now contribute a larger portion of many kinds of pollutants than the more thoroughly regulated sewage treatment plants and industrial facilities. The 1987 CWA amendments established a framework for regulating urban storm water runoff. Pursuant to these amendments, the Santa Ana Regional Water Quality Control Board (Regional Board) started regulating municipal storm water runoff in 1990.

The attached pages contain information concerning an application for renewal of waste discharge requirements and a National Pollutant Discharge Elimination System (NPDES) permit. Order No. R8-2002-0012, NPDES No. CAS618036, prescribes waste discharge requirements for urban storm water runoff from the cities and the unincorporated areas in San Bernardino County within the jurisdiction of the Santa Ana Regional Board. On September 1, 2000, the San Bernardino County Flood Control District (SBCFCD) and the County of San Bernardino, in cooperation with the cities of Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, and Yucaipa (hereinafter collectively referred to as permittees or dischargers), submitted NPDES Application No. CAS618036 (Report of Waste Discharge) for reissuance of their area-wide NPDES storm water permit. The permit renewal application was submitted in accordance with the requirements specified in the previous

NPDES storm water permit (Order No. 96-32, NPDES No. CA 618036), which expired on March 1, 2001. The permit application also follows guidance provided by the staff of the State Water Resources Control Board (State Board) and the Regional Water Quality Control Boards (Regional Boards).

On March 2, 2001, Order No. 96-32, NPDES No. CAS 618036, was administratively extended in accordance with 40 CFR Part 122.6 and Title 23, Division 3, Chapter 9, §2235.4 of the California Code of Regulations.

Order No. R8-2002-0012 regulates discharges of urban storm water from the upper Santa Ana watershed to waters of the U.S., ultimately draining to the Pacific Ocean.

II. REGULATORY BACKGROUND/CLEAN WATER ACT REQUIREMENTS

Urban runoff includes dry and wet weather flows from urbanized areas through a storm water conveyance system. As water flows over streets, parking lots, construction sites, and industrial, commercial, residential, and municipal areas, it can intercept pollutants from these areas and transport them to waters of the U.S. Urban runoff may contain pathogens (bacteria, viruses, protozoa), sediment, trash, fertilizers (nutrients, mostly compounds of nitrogen and phosphorus), oxygen-demanding substances (decaying and/or decomposable matter), pesticides (DDT, chlordane, diazinon, chlorpyrifos) heavy metals (cadmium, copper, chromium, lead, zinc), and petroleum products (oil & grease, PAHs, petroleum hydrocarbons). If not properly managed and controlled, urbanization can change the stream hydrology and increase pollutant loading to receiving waters. As watersheds undergo urbanization, pervious surface area decreases, runoff volume and velocities increase, riparian habitats and wetland habitats decrease, frequency and severity of flooding increase, and pollutant loading increases. Most of these impacts are due to human activities that occur during and/or after urbanization. The pollutants and hydrologic changes can cause declines in aquatic resources, cause toxicity to marine organisms, and impact human health and the environment.

The United States Environmental Protection Agency (U.S. EPA) recognizes urban runoff as the number one source of estuarine pollution in coastal communities[1]. Recent studies[2] conducted in the Southern California area have established a definite link between storm water runoff from urban areas and pollution in nearshore zones. A number of Orange County beaches were closed during the summer of 1999 and 2000 due to microbial contamination. During wet weather or storm conditions, discharges from the San Bernardino County areas may ultimately drain into the Pacific Ocean and can have an impact on Orange County beaches. If not properly controlled, urban runoff could be a significant source of pollutants in waters of the US. Table 1 includes a list of pollutants and their sources in urban runoff and lists some of the adverse impacts these pollutants could have on receiving waters.

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[1] US EPA, 1999, 40CFR Parts 9, 122, 123, 124, National Pollutant Discharge Elimination System – Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges; Final Rule, 64FR 68727.

[2] Bay, S., Jones, B. H. and Schiff, K. 1999, Study of the Impact of Storm water Discharge on Santa Monica Bay. Sea Grant Program, University of Southern California; and Haile, R.W., et. al., 1996, An Epidemiological Study of Possible Adverse Health Effects of Swimming in Santa Monica Bay.

Table 1[3]

Pollutants/Impacts of Urbanization

Pollutants	Sources	Effects and Trends
Toxins (e.g., biocides, PCBs, trace metals, heavy metals)	Industrial and municipal wastewaters; runoff from farms, forests, urban areas, and landfills; erosion of contaminated soils and sediments; vessels; atmospheric deposition	Poison and cause disease and reproductive failure; fat-soluble toxins may bioconcentrate, particularly in birds and mammals, and pose human health risks. Inputs into U.S. waters have declined, but remaining inputs and contaminated sediments in urban and industrial areas pose threats to living resources.
Pesticides (DDT, diazinon, chlorpyrifos)	Urban runoff; residential, commercial, industrial, and farm use; agricultural runoff	Legacy pesticides (DDT, chlordane, dieldrin) have been banned; still persists in the environment; some of the other pesticide uses have been curtailed or restricted.
Biostimulants (organic wastes, plant nutrients)	Sewage and industrial wastes; runoff from farms and urban areas; nitrogen from combustion of fossil fuels	Organic wastes overload bottom habitats and deplete oxygen; nutrient inputs stimulate algal blooms (some harmful), which reduce water clarity, cause loss of seagrass and coral reef, and alter food chains supporting fisheries. While organic waste loadings have decreased, nutrient loadings have increased (NRC, 1993a, 2000a).
Petroleum products (oil, grease, petroleum hydrocarbons, PAHs)	Runoff and atmospheric deposition from land activities; shipping and tanker operations; accidental spills; oil gas production activities; natural seepage; PAHs from internal combustion engines	Petroleum hydrocarbons can affect bottom organisms and larvae; spills affect birds, mammals and aquatic life. While oil pollution from ships, accidental spills, and production activities has decreased, diffuse inputs from land-based activities have not (NRC, 1985).
Radioactive isotopes	Atmospheric fallout, industrial and military activities	Bioaccumulation may pose human health risks where contamination is heavy.
Sediments	Erosion from farming, construction activities, forestry, mining, development; river diversions; dredging and mining	Reduce water clarity and change bottom habitats; carry toxins and nutrients; clog fish gills and interfere with respiration in aquatic fauna. Sediment delivery by many rivers has decreased, but sedimentation poses problems in some areas.
Plastics and other debris	Boats, fishing nets, containers, trash, urban runoff	Entangles aquatic life or is ingested; degrades wetlands and habitats. Floatables (from trash) are an aesthetic nuisance and can be a substrate for algae and insect vectors.
Thermal	Cooling water from power plants and industry, urban runoff from impervious surfaces	Kills some temperature-sensitive species; displaces others.
Pathogens (bacteria, protozoa, viruses)	Sewage, urban runoff, livestock, wildlife, and discharges from boats.	Pose health risks to swimmers and consumers of seafood. Sanitation has improved, but standards have been raised (NRC 1999a).
Alien species	Fishery stocking, aquarists	Displace native species, introduce new diseases; growing worldwide problem (NRC 1996).

[3] Adapted from "Marine Pollution in the United States" prepared for the Pew Oceans Commission, 2001.

The Clean Water Act (CWA) prohibits the discharge of any pollutant to navigable waters from a point source unless an NPDES permit authorizes the discharge. Efforts to improve water quality under the NPDES program traditionally and primarily focused on reducing pollutants in discharges of industrial process wastewater and municipal sewage. The 1987 amendments to the CWA required municipal separate storm sewer systems (MS4s) and industrial facilities, including construction sites, to obtain NPDES permits for storm water runoff from their facilities. On November 16, 1990, the United States Environmental Protection Agency (EPA) promulgated the final Phase I storm water regulations. The storm water regulations are contained in 40 CFR Parts 122, 123 and 124.

The areawide NPDES permit for San Bernardino County areas within the Santa Ana Regional Board's jurisdiction is being considered for renewal in accordance with Section 402 (p) of the CWA and all requirements applicable to an NPDES permit issued under the issuing authority's discretionary authority. The requirements included in this Order are consistent with the CWA, the federal regulations governing urban storm water discharges, the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan), the California Water Code, and the State Board's Plans and Policies.

The Basin Plan is the basis for the Regional Board's regulatory programs. The Plan was developed and is periodically reviewed and updated in accordance with relevant federal and state law and regulation, including the Clean Water Act and the California Water Code. As required, the Basin Plan designates the beneficial uses of the waters of the Region and specifies water quality objectives intended to protect those uses. (Beneficial uses and water quality objectives, together with an antidegradation policy, comprise federal "water quality standards"). The Basin Plan also specifies an implementation plan, which includes certain discharge prohibitions. In general, the Basin Plan makes no distinctions between wet and dry weather conditions in designating beneficial uses and setting water quality objectives, i.e., the beneficial uses, and correspondingly, the water quality objectives are assumed to apply year-round. (Note: In some cases, beneficial uses for certain surface waters are designated as "I", or intermittent, in recognition of the fact that surface flows (and beneficial uses) may be present only during wet weather.) Most beneficial uses and water quality objectives were established in the 1971, 1975 and 1983 Basin Plans.

Water Code Section 13241 requires that certain factors be considered, at a minimum, when water quality objectives are established. These include economics and the need for developing housing in the Region. (The latter factor was added to the Water Code in 1987). During this permit development process, the permittees raised an issue regarding compliance with Section 13241 of the California Water Code with respect to water quality objectives for wet weather conditions, specifically the cost of achieving compliance during wet weather conditions and the need for developing housing within the Region and its impact on urban storm water runoff. During the next review of the Basin Plan, staff will recommend that this matter be incorporated on the triennial review list. In the meantime, the provisions of this Order will result in reasonable further progress towards the attainment of the existing water quality objectives, in accordance with the discretion in the permitting authority recognized by the United States Court of Appeals for the Ninth Circuit in Defenders of Wildlife v Browner, 191 F.3d 1159, 1164 (9th Cir. 1999).

III. BENEFICIAL USES

Storm water flows which are discharged to municipal storm drain systems in San Bernardino County are tributary to various water bodies (inland surface streams, lakes and reservoirs) of the state. The beneficial uses of these water bodies include municipal and domestic supply, agricultural supply, industrial service and process supply, groundwater recharge, hydropower generation, water contact recreation, non-contact water recreation, and sportfishing, warm freshwater habitat, cold freshwater habitat, preservation of biological habitats of special significance, wildlife habitat and preservation of rare, threatened or endangered species. The ultimate goal of this storm water management program is to protect the beneficial uses of the receiving waters.

IV. PROJECT AREA

The permitted area is delineated by the Santa Ana-Lahontan Regional Board boundary line on the north and northeast, the Santa Ana-Colorado River Basin Regional Board boundary line on the east, the San Bernardino-Riverside County boundary line on the south and southeast, the San Bernardino-Orange County boundary line on the southwest, and the San Bernardino-Los Angeles County boundary line on the west (see Attachment 1). The permittees serve a population of approximately 1.33 million, occupying an area of approximately 985 square miles. The latest figures estimated 384 miles of aboveground and 334 miles of below ground storm drain channels in the project area. Approximately seven percent (7%) of the San Bernardino County surface area drains into water bodies within this Regional Board's jurisdiction. Storm water discharges from urbanized areas consist mainly of surface runoff from residential, commercial and industrial developments. In addition, there are storm water discharges from agricultural land uses, including farming and animal feeding operations. However, the CWA specifically excludes discharges from agricultural sources from regulations under this program. Areas of the County not addressed or which are excluded under the storm water regulations and areas not under the jurisdiction of the permittees are excluded from coverage under this permit. These areas or activities include the following:

- Federal lands and state properties, including, but not limited to, military bases, national forests, hospitals, schools, colleges and universities, and highways;
- Native American tribal lands;
- Open space and rural (non-urbanized) areas;
- Agricultural lands; and
- Utilities and special districts.

Discharges from the project area drain into the Santa Ana River. The watershed regulated under this Order is generally referred to as the Upper Santa Ana River Basin.

V. WATERSHED MANAGEMENT/UPPER SANTA ANA RIVER BASIN

To regulate and control storm water discharges from the San Bernardino County area to the San Bernardino County storm drain systems, an area-wide approach is essential. The entire storm drain system in San Bernardino County is not controlled by a single entity; the SBCFCD, several cities, and the State Department of Transportation

(Caltrans) manage the system. In addition to the cities and the SBCFCD, there are a number of other significant contributors of urban storm water runoff to these storm drain systems. These include: large institutions, such as the State University system; schools; hospitals; federal facilities, such as military installations; State agencies, such as Caltrans; water and wastewater management agencies, such as San Bernardino Valley Municipal Water District and Inland Empire Utilities Agency; the National Forest Service; and state parks. The management and control of the entire flood control system cannot be effectively carried out without the cooperation and efforts of all these entities. Also, it would not be meaningful to issue a separate storm water permit to each of the entities within the permitted area whose land/facilities drain into the county storm drain systems. The Regional Board has concluded that the best management option for the San Bernardino County area is to issue an area-wide storm water permit. Some of the storm drain systems in the project area discharge into storm drain systems controlled by other entities, such as the County of Riverside, the County of Orange, and the County of Los Angeles.

Cooperation and coordination among all the stakeholders are essential for efficient and economical management of the watershed. It is also critical to manage non-point sources at a level consistent with the management of urban storm water runoff in a watershed in order to successfully prevent or remedy water quality impairment. Regional Board staff will facilitate coordination of monitoring and management programs among the various stakeholders, when necessary.

An integrated watershed management approach is consistent with the Strategic Plan and Initiatives (June 22, 1995) for the State and Regional Boards. A watershed wide approach is also necessary for implementation of the load and waste load allocations to be developed under the TMDL process. The MS4 permittees and all the affected entities should be encouraged to participate in regional or watershed solutions, instead of project-specific and fragmented solutions.

The pollutants in urban runoff originate from a multitude of sources, and effective control of these pollutants requires a cooperative effort of all the stakeholders and many regulatory agencies. Every stage of urbanization should be considered in developing appropriate urban runoff pollution control methodologies. The program's success depends upon consideration of pollution control techniques during planning, construction and post-construction operations. At each stage, appropriate pollution prevention measures, source control measures, and, if necessary, treatment techniques should be considered.

1. SUB-WATERSHEDS AND MAJOR CHALLENGES

The Santa Ana River Watershed in San Bernardino County can be subdivided into the following sub-watersheds:

A. UPPER SANTA ANA RIVER WATERSHED

The Upper Santa Ana River Watershed includes the upper reaches of the Santa Ana River (Reaches 4, 5 and 6) and its tributaries.

1. Reach 4 of the Santa Ana River: Reach 4 of the Santa Ana River is the portion of the River from Mission Boulevard bridge in Riverside to the San Jacinto fault (Bunker Hill Dike) in San Bernardino. There is perennial flow in this reach of the River, mostly from the upstream

discharges of treated municipal wastewater. Much of this reach is also maintained as a flood control facility. This reach of the River is posted to warn against water contact recreation, due to microbial problems. The wastewater discharges from the sewage treatment plants to this reach of the River are tertiary treated and are not expected to be sources of microbial contamination. This Order requires the permittees to investigate other sources, such as the transient population living along this stretch of the River, wild life, etc., and storm water and dry weather urban runoff to determine the cause of microbial contamination along Reach 4 of the River. Lytle Creek and Cajon Creek are the other major tributaries to this reach of the River.

Other major problems along this reach of the River include the buildup of total dissolved solids (TDS, dissolved salts or minerals) and nitrogen, largely in nitrate form. The buildup of TDS and nitrates can impact downstream beneficial uses, including reclamation. The buildup of TDS and nitrate is mostly due to agricultural uses, including dairies and the application of fertilizers, municipal and industrial wastewater discharges, and reuse and recycling operations. A complex set of programs and policies are included in the Basin Plan to address this problem, including a water supply plan, a wastewater management plan, and a groundwater management plan. Other elements of the Basin Plan include the non-point source program and the storm water program. The Basin Plan identifies the Statewide General Permits and the MS4 permits as the regulatory tools for storm water management in the Basin.

2. Reach 5 of the Santa Ana River: This reach of the River extends from the San Jacinto Fault in San Bernardino to the Seven Oaks Dam. Most of this reach of the River is maintained as a flood control facility and is dry, except during storm flows. Major tributaries to this reach include San Timoteo Creek, City Creek, Plunge Creek, and Warm Creek. These tributaries are usually dry, except for the discharge of treated wastewater from Yucaipa Valley Water District to San Timoteo Creek and from the City of Beaumont to Coopers Creek (a tributary to San Timoteo Creek). These wastewater discharges flow for a short distance and percolate into the ground. No major water quality problems have been identified in this stretch of the River or its tributaries.

3. Reach 6 of the Santa Ana River: This reach includes the River upstream of Seven Oaks Dam. Major tributaries include Bear Creek, Forsee Creek, and Rattlesnake Creek. Flows consist mostly of snowmelt and storm water runoff. Water quality in this reach of the River tends to be very good.

B. CHINO BASIN WATERSHED

The Chino Basin Watershed covers about 405 square miles and lies largely in the southwestern corner of San Bernardino County, and part of western Riverside County. This permit only covers those portions of the watershed

that are within San Bernardino County under the jurisdiction of this Board. Surface drainage is generally southward, from the San Gabriel Mountains toward the Santa Ana River and Prado Flood Control Basin. Major surface waterbodies in the Chino Basin Watershed include:

- San Antonio Creek
- Chino Creek
- Cucamonga Creek
- Day Creek, and
- Deer Creek

Although it was originally developed as an irrigated agricultural area, and then into dairies, the watershed is being steadily urbanized. The municipalities under this permit in the Chino Basin Watershed include Chino, Chino Hills, Fontana, Montclair, Ontario, Rancho Cucamonga, Rialto, and Upland. The Chino-Corona Agricultural Preserve has the highest concentration of dairy animals in the nation. The ground and surface water quality in the area have been adversely impacted by these dairy operations.

The dairies within the Region are regulated under the Board's General Dairy Permit, Order No. 99-11, NPDES No. CAG018001. The General Dairy Permit allows discharge of storm water from dairies only for storms exceeding a 24-hour 25-year frequency. The area lacks appropriate flood control facilities, and runoff from upstream urbanized areas often inundates some of the dairies in the area, even during light or moderate storm and runoff events. This causes dairy waste containment facilities to fail and overflow into surface drainage facilities. This overflow causes nutrient, TDS, TSS, and microbial problems in the receiving waters. The San Bernardino and Riverside County Flood Control Districts, in cooperation with local municipalities, are coordinating an effort to construct flood control facilities in the area.

Groundwater problems (mostly TDS and nitrate) in the Chino Basin Watershed are being addressed through a comprehensive watershed management plan. As part of this plan, desalters are being developed to pump and treat contaminated groundwater in the southern part of Chino Basin. One desalter has been built, and a second one is being designed. A co-composting facility owned by the Inland Empire Utilities Agency accepts manure from Chino Basin dairies. The co-composting facility is required to distribute the products outside of the Chino Basin Watershed to reduce the re-introduction of TDS and nutrients to this watershed from the land application of the composted product.

C. BIG BEAR LAKE WATERSHED

The Big Bear Lake watershed is located in the San Bernardino Mountains. Major waterbodies in this watershed include:

- Big Bear Lake
- Baldwin Lake (currently a dry lakebed)

- Stanfield Marsh
- Shay Meadows
- Rathbone (Rathbun) Creek
- Summit Creek
- Grout Creek

Big Bear Lake is a high mountain reservoir occupying a relatively small, east to west oriented basin. The basin supports a large number of recreational activities. Lake recreational activities include fishing, swimming, boating and water skiing. Areas adjacent to the lake are used for camping, skiing, hiking, equestrian trails and other outdoor activities. Water in the Lake is also used for municipal supplies. A number of water quality problems have been identified for the Lake.

The 1998 303(d) list of impaired water bodies (see below) designated the following waterbodies in this sub-watershed as impaired: Big Bear Lake (nutrients, copper, mercury and siltation); Grout Creek (metals and nutrients); Knickerbocker Creek (metals and pathogens); Summit Creek (nutrients); and Rathbone Creek (nutrients and siltation). The problem pollutants have been identified as coming from resource extraction activities, urban runoff, snow skiing activities, construction and land developments, and non-point sources. In conjunction with local stakeholders, work is underway to develop TMDLs for these pollutants. The TMDLs are expected to be complete by 2004/2005.

2. CWA SECTION 303(d) LIST AND TMDLS*:*

Pursuant to Section 303(b) of the CWA, the 1998 water quality assessment identified a number of water bodies as impaired. These are waterbodies where the designated beneficial uses are not met and the water quality objectives are being violated. The impaired waterbodies in San Bernardino County within the Santa Ana Regional Board's jurisdiction are listed in Table 2 and shown on Attachment 1 of the permit.

Table 2

CLEAN WATER ACT SECTION 303(D) LISTED WATERBODIES & TMDL SCHEDULE

Waterbody	Hydro Unit	Size Affected	Pollutant Stressor	Source	Priority	TMDL Schedule	Permittees
Big Bear Lake	801.710	2970 acres 2970 acres 2970 acres 2970 acres 2970 acres 2970 acres 2970 acres 2970 acres	Copper Mercury Metals Noxious aquatic plants Nutrients Sedimentation/Siltation	Resource Extraction Resource Extraction Resource Extraction Construction/Land development Construction/Land development Snow Skiing Activities Construction/Land development Snow Skiing Activities	Medium Medium Medium Medium Medium Medium Medium Medium	01/02 – 01/05	City of Big Bear Lake County of San Bernardino
Summit Creek	801.710	1 mile	Nutrients	Construction/Land Development	Medium	01/02 – 01/05	City of Big Bear Lake, County of San Bernardino
Knickerbocker Creek	801.710	2 miles 2 miles	Metal Pathogens	Unknown Non-point Source Unknown Non-point Source	Medium	01/03 – 01/05	City of Big Bear Lake, County of San Bernardino
Grout Creek	801.720	2 miles 2 miles	Metal Nutrients	Unknown Non-point Source Unknown Non-point Source	Medium	01/02 – 0105	City of Big Bear Lake, County of San Bernardino
Rathbone Creek	801.720	2 miles 2 miles	Nutrients Sedimentation/Siltation	Snow Skiing Activities Unknown Non-point Source	Medium	01/02 – 01/05	City of Big Bear Lake, County of San Bernardino
Mountain Home Creek, East Fork	801.700	1 mile	Pathogens	Unknown Non-point Source	Low	01/08 – 01/11	County of San Bernardino
Mountain Home Creek	801.580	4 miles	Pathogens	Unknown Non-point Source	Low	01/08 – 01/11	County of San Bernardino
Mill Creek (Prado Area)	801.250	4 miles	Nutrients Pathogens Suspended Solids	Agriculture, Dairies Dairies Dairies	Medium Medium Medium	01/00 – 01/05 01/00 – 01/05 01/00 – 01/05	Ontario, Rancho Cucamonga, Upland, SBCFCD, County of San Bernardino
Mill Creek, Reach 1	801.580	5 miles	Pathogens	Unknown Non-point Source	Low	01/08 –01/11	Redlands, SBCFCD, County of San Bernardino
Mill Creek, Reach 2	801.580.	8 miles	Pathogens	Unknown Non-point Source	Low	01/08 – 01/11	SBCFCD, County of San Bernardino
Santa Ana River, Reach 4	801.270	12 miles	Pathogens	Non-point Source	Low	01/08 – 01/11	Colton, Rialto, Highland, Grand Terrace, Redlands, City of San Bernardino, SBCFCD, County of San Bernardino
Lytle Creek	801.400	18 miles	Pathogens	Unknown Non-point Source	Low	01/08 – 01/11	City of San Bernardino, SBCFCD, County of San Bernardino
Chino Creek, Reach 1	801.210	2 miles	Nutrients Pathogens	Agriculture Dairies Dairies Urban Runoff/ Storm Sewers	Medium Medium	01/00 – 01/05	Chino, Chino Hills, SBCFCD, County of San Bernardino
Chino Creek, Reach 2	801.210	10 miles	High Coliform Count	Unknown Non-point Source	Low	01/08 – 01/11	Chino, Chino Hills, SBCFCD, County of San Bernardino
Prado Park Lake	801.210	60 acres	Nutrients Pathogens	Non-point Source Non-point Source	Low Low	01/08 – 01/11 01/08 – 01/11	Chino, Chino Hills, County of San Bernardino
Cucamonga Creek, Valley Reach	801.210	13 miles	High Coliform Count	Unknown Non-point Source	Low	01/08 – 01/11	Ontario, Rancho Cucamonga, Upland, SBCFCD, County of San Bernardino

Federal regulations require that a total maximum daily load (TMDL) be established for each 303(d) listed waterbody for each of the pollutants causing impairment. The TMDL is the total amount of the problem pollutant that can be discharged while water quality standards in the receiving water are attained, i.e., water quality objectives are met and the beneficial uses are protected. It is the sum of the individual wasteload allocations (WLA) for point source inputs, load allocations (LA) for non-point source inputs and natural background, with a margin of safety. The TMDLs are the basis for limitations established in waste discharge requirements. TMDLs are being developed for all pollutants identified in Table 2. However, this permit may be reopened to include TMDL implementation, if other implementation methodologies are not effective.

VI. FIRST AND SECOND TERM PERMITS; STORM WATER POLLUTION CONTROL PROGRAMS/POLICIES

Prior to EPA's promulgation of the final storm water regulations, the counties of Orange, Riverside and San Bernardino requested areawide NPDES permits for storm water runoff. On August 29, 1990, the Regional Board issued Order No. 90-136 to the San Bernardino County permittees (first term permit). In 1996, the Board adopted Order No. 96-32 (second term permit). First and second term permits included the following requirements:

1. Prohibited non-storm water discharges to the MS4s, with certain exceptions.
2. Required the municipalities to develop and implement a drainage area management plan (DAMP) to reduce pollutants in urban storm water runoff to the maximum extent practicable (MEP).
3. Required the discharges from the MS4s to meet water quality standards in receiving waters.
4. Required the municipalities to identify and eliminate illicit connections and illegal discharges to the MS4s.
5. Required the municipalities to establish legal authority to enforce storm water regulations.
6. Required monitoring of dry weather flows, storm flows, and receiving water quality, and required program assessment.

The following programs and policies have been implemented or are being implemented by the permittees. During the first term permit, the permittees developed a Drainage Area Management Plan (1993 DAMP). The 1993 DAMP included a number of best management practices (BMPs) and a very extensive public education program. The monitoring programs for the first and second term permit included 10 monitoring stations within streams and flood control channels. The findings and conclusions from these monitoring stations and monitoring programs of other municipal permittees (Riverside County, Orange County and others) have been used to identify problem areas and to re-evaluate the monitoring program and the effectiveness of the BMPs. The future direction of some of these program elements will depend upon the results of the ongoing studies and a holistic approach to watershed management.

Other elements of the storm water management program included identification and elimination of illegal discharges and illicit connections and establishment of adequate legal authority to control pollutants in storm water discharges. The permittees have completed a survey of their storm drain systems to identify illegal/illicit connections and have adopted appropriate ordinances to establish legal authority. Some of the more specific achievements during the first and second term permits are as follows:

1. Interagency Agreements and Coordination: Established a program management structure through an interagency Implementation Agreement and established a Management Committee as an overall decision making body with designated representatives from each of the permittees. Participated in regional monitoring programs and focused special studies/research programs. Worked with other local and State agencies to provide a consistent urban storm water pollution control message to the public. Worked with Caltrans, other transportation agencies, the Storm Water Quality Task Force, and others to further study and understand urban runoff problems and control measures.

2. Ordinances, Plans and Policies: Adopted Model Storm Drain Ordinance and Implementation Plan and Model Guidelines for New Development and Redevelopment; developed the Municipal Activities Pollution Prevention Strategy (MAPPS) which contains a complete list of BMPs for corporate yard activities and Criteria for MS4 Inspections.

3. Program Review: A number of existing programs were reviewed to determine their effectiveness in combating urban pollution and to recommend alternatives and/or improvements, including review and revision of CEQA Process and General Plan elements to address storm water quality issues, litter control measures, street sweeping frequencies and methods, public agency activities and facilities, illegal discharges and illicit connections to the MS4 systems, and existing monitoring programs. A public survey was conducted to determine the public's understanding of storm water pollution and prevention, and the effectiveness of the Storm Water Program's campaigns.

4. Public Education: A number of steps were taken to educate the public, businesses, industries, and commercial establishments regarding their role in urban runoff pollution controls. The industrial dischargers were notified of the storm water regulatory requirements. Gas/service stations were targeted and a fact sheet developed with BMP information. Business Recognition Programs were instituted as incentives for storm water management. Fact sheets, brochures, and flyers were developed and distributed to residents. The permittees also participated in radio and television advertisements, presentations at schools and participation in regional events to increase awareness of pollution prevention among the general public. A 24-hour hotline was established for reporting illegal dumping or any violations of the storm water program as well as to provide information regarding the storm water program. A website was completed that highlights the storm drain system and storm water pollution prevention services offered by the San Bernardino County Storm Water Program,

BMPs, "Adopt-A-Gutter" program, and contacts/links to other related resources.

5. Public Agency Training: Training was provided to public agency employees to implement New Development Guidelines and Public Works BMPs, to conduct investigations of reported water quality problems, and to conduct inspections of industrial facilities and public work projects. The municipal planners were trained to recognize water quality related problems in proposed developments.

6. Related Activities: Modified flood control facilities by channel stabilization, creation of a sediment basin and expansion of an existing basin, eliminated illegal connections and permitted and/or documented illicit connections to the MS4s.

VII. FIRST AND SECOND TERM PERMITS; WATER QUALITY IMPROVEMENTS

An accurate and quantifiable measurement of the impact of the above stated storm water management programs is difficult, due to a variety of reasons, such as the variability in chemical water quality data, the incremental nature of BMP implementation, lack of baseline monitoring data and the existence of some of the programs and policies prior to initiation of formal storm water management programs. There are generally two accepted methodologies for assessing water quality improvements: (1) conventional monitoring such as chemical-specific water quality monitoring; and (2) non-conventional monitoring such as monitoring of the amount of household hazardous waste collected and disposed off at appropriate disposal sites, the amount of used oil collected, the amount of debris removed, etc.

The water quality monitoring data did not indicate any discernible trends or significant changes. However, the non-conventional monitoring data indicate that other programs and policies have been very effective in keeping a significant quantity of wastes from being discharged into waters of the US. It is expected that continuation of these programs and policies will eliminate and/or control pollutants in storm water runoff.

During the second term permit, there was an increased focus on watershed management initiatives and coordination among the municipal permittees in Orange, Riverside and San Bernardino Counties. These efforts resulted in a number of regional monitoring programs and other coordinated program and policy developments.

It is anticipated that with continued implementation of the management plan (ROWD) and other requirements specified in this Order, the goals and objectives of the storm water regulations will be met, including protection of the beneficial uses of all receiving waters.

VIII. FUTURE DIRECTION/2000 ROWD

The NPDES permit renewal application describes the area-wide Storm Water Management Program for the third permit term and it includes programs and policies the permittees are proposing to implement during the third term permit. The 2000 ROWD is the principal guidance document for urban storm water management programs in San Bernardino County and includes the following major components:

1. Provides a framework for the program management activities and municipal storm water management program development.

2. Provides the legal authority to control discharges to the MS4s.
3. Improves current BMPs to achieve further reduction in pollutant loading to the MS4s.
4. Includes programs and policies to increase public education processes and to seek public support for urban storm water pollution prevention BMPs.
5. Ensures controls for new developments and significant redevelopments.
6. Ensures that construction sites implement appropriate pollution control measures.
7. Ensures that industrial sites are in compliance with storm water regulations.
8. Includes programs and policies to eliminate illegal discharges and illicit connections to the MS4s.
9. Includes continued monitoring of urban runoff.
10. Includes provisions for any special focus studies and/or control measures.

A combination of these programs and policies and the requirements specified in this Order should improve control of pollutants in storm water runoff from storm water conveyance facilities owned and/or controlled by the permittees.

IX. PERMIT REQUIREMENTS

The legislative history of storm water statutes (1987 CWA Amendments), US EPA regulations (40CFR Parts 122, 123, and 124), and clarifications issued by the State Water Resources Control Board (State Board, Orders No. WQ 91-03 and WQ 92-04) indicate that a non-traditional NPDES permitting strategy was anticipated for regulating urban storm water runoff. Due to economic and technical infeasibility of full-scale end-of-pipe treatments and the complexity of urban storm water runoff quality and quantity, MS4 permits generally include narrative requirements for the implementation of BMPs in place of numeric effluent limits.

The requirements included in this Order are meant to specify those management practices, control techniques and system design and engineering methods that will result in maximum extent practicable (MEP) protection of the beneficial uses of the receiving waters. The State Board (Orders No. WQ 98-01 and WQ 99-05) concluded that MS4s must meet the technology-based MEP standard and water quality standards (water quality objectives and beneficial uses). The U. S. Court of Appeals for the Ninth Circuit subsequently held that strict compliance with water quality standards in MS4 permits is at the discretion of the local permitting agency. Any requirements included in the Order that are more stringent than the federal storm water regulations is in accordance with the CWA Section 402(p)(3)(iii), and the California Water Code Section 13377 and are consistent with the Regional Board's interpretation of the requisite MEP standard.

The Report of Waste Discharge (ROWD) included a discussion of the current status of San Bernardino County's urban storm water management program and the proposed programs and policies for the next five years (third term permit). This Order recognizes

the performance commitments made by the permittees for the third permit term in implementing the storm water regulations. Therefore, this Order is less prescriptive compared to some of the other MS4 NPDES permits for urban runoff issued by other Regional Boards. However, it hopes to achieve the same or better water quality benefits because of the programs and policies already being implemented or proposed for implementation.

The major requirements include: 1) Discharge prohibitions; 2) Receiving water limitations; 3) Adequate legal authority; 4) Prohibition on illicit connections and illegal discharges; 5) Inspection activities by the municipalities; 6) Sewage spills, sanitary sewer line leaks, septic system failures and portable toilet discharges; 7) New development/re-development requirements; 8) Public and business education; 9) Municipal facilities and activities; and 10) Monitoring and reporting requirements.

These programs and policies are intended to improve urban storm water quality and protect the beneficial uses of receiving waters of the region.

1. DISCHARGE PROHIBITIONS

In accordance with CWA Section 402(p)(3)(B)(ii), this Order prohibits the discharge of non-storm water to the MS4s, with a few exceptions. The specified exceptions are consistent with 40 CFR 122.26(d)(2)(iv)(B)(1). If the permittees or the Executive Officer determines that any of the exempted non-storm water discharges contain pollutants, a separate NPDES permit, a separate Waste Discharge Requirement or coverage under the Regional Board's De Minimis permit will be required.

2. RECEIVING WATER LIMITATIONS

Receiving water limitations are included to ensure that discharges from MS4 systems do not cause or contribute to violations of applicable water quality standards in receiving waters. The compliance strategy for receiving water limitations is consistent with the U.S. EPA and State Board guidance and recognizes the complexity of storm water management.

This Order requires the permittees to meet water quality standards in receiving waters in accordance with U.S. EPA requirements, as specified in State Board Order No. WQ 99-05. If water quality standards are not met by implementation of current BMPs, the permittees are required to re-evaluate the programs and policies and to propose additional BMPs. Compliance determination will be based on this iterative BMP implementation/compliance evaluation process.

3. LEGAL AUTHORITY

Each permittee has adopted a number of ordinances, municipal codes, and other regulations to establish legal authority to control discharges to the MS4s and to enforce these regulations as specified in 40 CFR 122.26(d)(2)(I)(B, C, E, and F). The permittees are required to enforce these ordinances and to take enforcement actions against violators (40 CFR 122.26(d)(2)(iv)(A-D).

The enforcement activities undertaken by a majority of the permittees have consisted primarily of Notices of Violation, which act to educate the public on the environmental consequences of illegal discharges. In the case of the County, additional action has sometimes included recovery of investigation and cleanup

costs from the responsible party. In the event of egregious or repeated violations, the option exists for referral to the County District Attorney for possible prosecution. In order to eliminate unauthorized, non-storm water discharges, reduce the amount of pollutants commingling with storm water runoff and thereby protect water quality, an additional level of enforcement is required between Notices of Violation and referrals to the District Attorney. Therefore, by November 15, 2003, the permittees are required to establish the authority and resources to administer either civil or criminal fines and/or penalties for violations of their local water quality ordinances (and the Federal Clean Water Act). The progress in establishing this program must be fully documented in the annual reports submitted by the permittees and the number, nature and amount of fines and/or penalties levied must be reported, beginning with the 2003/2004 annual report.

4. ILLEGAL DISCHARGES AND ILLICIT CONNECTIONS TO MS4s

The permittees have completed their survey of the MS4 systems and eliminated or permitted all identified illicit connections. The permittees have also established a program to address illegal discharges and a mechanism to respond to spills and leaks and other incidents of discharges to the MS4s. The permittees are required to continue these programs to ensure that the MS4s do not become a source of pollutants in receiving waters.

5. MUNICIPAL INSPECTION PROGRAM

Inspections by the municipalities of construction, industrial, and commercial activities within their jurisdiction are required, in order to control the discharge of pollutants entering the MS4 system. The municipalities are required to inventory companies and sites in the above categories, prioritize those companies and sites with respect to their threat to water quality and their proximity to sensitive receiving waters, and perform regular inspections to ensure compliance with local ordinances. While initial observations of non-compliance may result in educational type of enforcement, repeated non-compliance is expected to result in more disciplinary forms of enforcement, such as monetary penalties, stop work orders, or permit suspension or revocation.

During the second term permit, the permittees focused on identifying industrial and commercial facilities in each permittee's jurisdiction and on developing education and outreach materials. The permittees also developed and implemented a storm water inspection program that utilized existing inspection programs to check for storm water elements. This Order requires the permittees to prioritize these facilities by a specified date, based on threat to water quality, and prescribes a minimum inspection frequency for facilities based on this prioritization scheme.

This Order requires the permittees to continue their inspection programs and enforce local ordinances for storm water violations at all construction sites, including those covered under the Statewide General Construction Permit. This Order further requires the permittees to prioritize these sites by a specified date, based on threat to water quality, and prescribes a minimum inspection frequency for these sites based on this prioritization scheme.

6. SEWAGE SPILLS, SANITARY SEWER LINE LEAKS, SEPTIC SYSTEM FAILURES AND PORTABLE TOILET DISCHARGES

The permittees are required to determine if exfiltration from leaking sanitary sewer lines, sewage spills from blocked sewer lines, leaks and spills from sewer lines, improper use of portable toilets, and failing septic systems are causing or contributing to urban storm water pollution problems in their jurisdictions. If any of these is determined to be a problem, the permittees are required to develop and implement a plan to address these problems**.** In certain areas, the permittees may not have any control over sanitary sewer systems. In such cases, the permittees are required to work with the sanitation district for the area to develop acceptable solutions to these problems**.**

The permittees have already developed a sewage spill response policy and, where appropriate, entered into agreements with the sanitation districts for responding to sewage spills in a timely manner.

The Regional Board may consider issuing a separate Waste Discharge Requirement Order to address sanitary sewer overflows.

7. NEW DEVELOPMENT AND SIGNIFICANT REDEVELOPMENT

During the second term permit, the permittees developed Guidelines for New Development and Redevelopment. The permittees are required to implement these guidelines. Additionally, this Order requires the permittees to work towards the goal of restoring and preserving the natural hydrologic cycles in approving urban developments. To accomplish this goal, the permittees have the option of using a number of methodologies. The permittees/project proponents may propose BMPs based on a watershed approach, establish a storm water pollution prevention fund for such regional solutions, or propose other innovative and proven alternatives to address storm water pollution. If a set of measures acceptable to the Executive Officer is not developed and approved by December 1, 2003, the permittees are required to use the numeric sizing criteria specified in this Order. The numeric criteria are identical to the ones used by the San Diego Regional Board in its MS4 permit for permittees within the San Diego County area (Order No. 2001-01).

8. PUBLIC AND BUSINESS EDUCATION OUTREACH PROGRAM

Public outreach is an important element of the overall urban pollution prevention program. The permittees have committed to implement a strategic and comprehensive public education program to maintain the integrity of the receiving waters and their ability to sustain beneficial uses. The principal permittee has taken the lead role in the outreach programs and has targeted various groups including businesses, industry, developers, utilities, environmental groups, institutions, homeowners, school children, and the general public. The permittees have developed a number of educational materials, have established a storm water pollution prevention hotline, started an advertising and educational campaign, and distribute public education materials at a number of public events. The permittees are required to continue these efforts and to expand public participation and education programs.

9. MUNICIPAL FACILITIES AND ACTIVITIES

Education of municipal planning, inspection, and maintenance staff is critical to ensure that municipal facilities and activities do not cause or contribute to an exceedance of receiving water quality standards. The second term permit required the permittees to develop and implement a Municipal Activities Pollution Prevention Strategy to address public agency facilities and activities that are not regulated under the State's General Industrial Activities Storm Water Permit. For the third term permit, the permittees are proposing to regroup the program elements into seven groups: (1) Sewage Sytems; (2) Maintenance Areas and Materials Storage Areas; (3) Landscape Maintenance; (4) Storm Drain Systems; (5) Streets and Roads; (6) Municipal Activities Pollution Prevention training; and (7) Training. Performance commitments are included in the ROWD for each of these seven groups. These commitments and other requirements to ensure water quality protection are included in this Order.

10. MONITORING AND REPORTING REQUIREMENTS

During the first and second term permits, the permittees conducted system characterization, BMP evaluation, and storm water discharge, and receiving water monitoring. These early programs focused on identifying pollutants, estimating pollutant loads, tracking compliance with water quality objectives, and identifying sources of pollutants. The San Bernardino County monitoring programs, as well as other monitoring programs nationwide, have shown that there is a high degree of uncertainty in the quality of storm water runoff and that there are significant variations in the quality of urban runoff spatially and temporally. However, most of the monitoring programs to date have indicated that there are a number of pollutants in urban storm water runoff. A definite link between pollutants in urban runoff and beneficial use impairments has been established only in a few cases.

In 2000, the permittees re-evaluated their monitoring program and proposed a revised monitoring program. The overall goal of the proposed Monitoring Program is to provide information in support of effective implementation of the areawide storm water program. The monitoring program goals are to evaluate BMP effectiveness, identify key pollutants of concern and their sources, evaluate impacts from urban runoff sources to local receiving waters, and participate in regional monitoring and research programs.

To accomplish these goals, the monitoring program focuses on the following areas:

1. Characterization and mapping of drainage areas including identification of pollutants of concern;
2. BMP effectiveness studies to evaluate the usefulness of sedimentation basins and other available technologies for storm water pollution prevention;
3. Receiving water monitoring of selected sites for key chemical and physical constituents, focusing on sites upstream and downstream of the urbanized area on the Santa Ana River and Cucamonga Creek;

4. Additional monitoring to provide bacteriological data in cooperation with Riverside County;
5. Source identification to identify sources of pollutants of concern; and
6. Data analysis using statistical methods.

Historical wet weather monitoring has shown elevated pollutant concentrations at monitoring Sites 2, 3 and 5. Monitoring Site 2 is located 400 feet south of Freeway 60, west of Archibald Avenue, on the east side of Cucamonga Creek Channel, in the City of Ontario. Land use within this drainage area is primarily commercial and industrial. Site No. 3 is located at Hellman Avenue, between Pine Avenue/Schleisman Road and Chino-Corona Road/Chandler Street, 75 feet east of Hellman Avenue bridge on the south side of Cucamonga Creek Channel near the City of Chino on the San Bernardino County/Riverside County line. This site drains the entire Cucamonga Creek, however the area between Site No. 2 and this site is mainly agricultural. Site No. 5 is located in the Hunts Lane access road north of Hospitality Lane, in a manhole located in the asphalt parking lot behind the Souplantation Restaurant in the City of San Bernardino. This site receives flows from predominantly restaurants mixed with businesses. Using wet weather monitoring data from 1994-99, the 2000 ROWD identified Site 5 to have the highest average concentration for BOD, copper, zinc, and TSS while Site 3 has the highest average concentrations for nitrate and phosphorus. First flush data from the 1999-2000 monitoring events showed elevated levels consistent with prior years' data for Sites 2, 3, and 5.

The permittees are required to continue first flush monitoring at storm drain monitoring Sites 2, 3, and 5 and focus source identification and control efforts at these locations pending approval of an integrated watershed monitoring program.

The permittees also participate in a number of other regional monitoring programs, such as the Southern California Coastal Water Research Project's (SCCWRP) Storm Water Monitoring / Research Cooperative Program.

The permittees are encouraged to continue their participation in regional and watershed-wide monitoring programs. By July 1, 2003, the permittees are required to re-evaluate their Water Quality Monitoring Program and submit a revised plan for approval. The revised integrated watershed monitoring program will identify data gaps from previous and other monitoring efforts, aim to attain the above-mentioned objectives and will incorporate statewide requirements for municipal storm water monitoring programs.

X. WATER QUALITY BENEFITS/COST ANALYSIS/FISCAL ANALYSIS

There are direct and indirect benefits from clean beaches, clean water, and clean environment. It is difficult to assign a dollar value to the benefits the public derives from fishable and swimmable waters. In 1972, at the start of the NPDES program, only 1/3 of the U.S. waters were swimmable and fishable. In 2001, 2/3 of the U.S. waters meet these criteria. In the 1995 "*Money"* magazine survey of the "Best Places to Live," clean water and air ranked as the most important factors in choosing a place to live. Thus, environmental quality has a definite link to property values. Clean lakes and beaches and other water recreational facilities also attract tourists.

The true magnitude of the urban runoff problem is still elusive and any cost estimate for cleaning up urban runoff would be premature short of end-of-pipe treatments. For urban storm water runoff, end-of-pipe treatments are cost prohibitive and are not generally considered as a technologically feasible option. Over the last decade, the permittees have attempted to define the problem and implemented best management practices to combat the problem. The costs incurred by the permittees in implementing these programs and policies are available.

The area-wide program is funded by the permittees. The principal permittee prepares an annual budget for the Management Committee. The principal permittee allocates 95 percent of the approved budget costs to the co-permittees based on percentage calculated using the cost allocation formula defined in the Implementation Agreement. The area-wide program activities include: overall storm water program coordination; intergovernmental agreements; representation at the Storm Water Quality Task Force, Regional Board/State Board meetings and other public forums; preparation and submittal of compliance reports and other reports required under the NPDES permits; responding to Water Code Section 13267 requests; budget and other program documentation; and coordination of consultant studies, co-permittee meetings, and training seminars. For the next permit term, the projected average annual area-wide budget is about $650,000. The overall costs increased from $2.50M in 1996-2001 to $3.25M for the next permit term.

The permittees identified the following budget for Fiscal Year (2001/02):

EXPENDITURE ITEMS	AMOUNT ($)	PERCENTAGE
Annual NPDES Permit Fee	10,000	1.25
Monitoring Program	150,000	18.75
Public Education Program	350,000	43.75
Consultant Costs	50,000	6.25
Administration	170,000	21.25
Participation in Statewide NPDES Issues	40,000	5.00
Contingency	30,000	3.75
Total	800,000	100.00

XI. ANTIDEGRADATION ANALYSIS

The Regional Board has considered whether a complete antidegradation analysis, pursuant to 40 CFR 131.12 and State Board Resolution No. 68-16, is required for the storm water discharges. The Regional Board finds that the pollutant loading rates to the receiving waters will be reduced with the implementation of the requirements in this Order. As a result, the quality of storm water discharges and receiving waters will be improved, thereby improving protection for the beneficial uses of waters of the United States. Since this Order will not result in a lowering of water quality, a complete antidegradation analysis is not necessary, consistent with the federal and state antidegradation requirements.

XII. PUBLIC WORKSHOPS

The Regional Board recognizes the significance of San Bernardino County's Storm Water/Urban Runoff Management Program and will conduct, participate, and/or assist with any workshop during the term of this permit to promote and discuss the progress of the storm water management program. The first public workshop regarding this draft Order was conducted at the September 26, 2001 Board meeting held at the City Council Chambers of Corona. The second public workshop was conducted at the January 23, 2002 Board meeting, also held at the City Council Chambers of Corona. Persons wishing to be included in the mailing list for any of the items related to this permit may register their name, mailing address and phone number with the Regional Board office at the address given below.

XIII. PUBLIC HEARING

The Regional Board will hold a public hearing regarding the proposed waste discharge requirements at the April 26, 2002 Board meeting to be held at the City Council Chambers of Corona, 815 W. Sixth Street, Corona. Further information regarding the conduct and nature of the public hearing concerning these waste discharge requirements may be obtained by writing or visiting the Santa Ana Regional Board office, 3737 Main Street, Suite 500, Riverside, CA 92501-3339. This and other information are also available at the website at: www.swrcb.ca.gov/rwqcb8.

XIV. INFORMATION AND COPYING

Persons wishing further information may write to the above address or call Mr. Muhammad Bashir at (909) 320-6396. Copies of the application, proposed waste discharge requirements, and other documents (other than those which the Executive Officer maintains as confidential) are available at the Regional Board office for inspection and copying by appointment scheduled between the hours of 10:00 a.m. and 4:00 p.m., Monday through Friday (excluding holidays).

XV. REGISTER OF INTERESTED PERSONS

Any person interested in a particular application or group of applications may leave his/her name, address, and phone number as part of the file for an application. Copies of tentative waste discharge requirements will be mailed to all interested parties.

XVI. RECOMMENDATIONS

Adopt Order No. R8-2002-0012, NPDES No. CAS618036, as presented.

In addition to the dischargers, comments were solicited from the following agencies and/or persons:

U.S. Environmental Protection Agency - Terry Oda/Eugene Bromley, Permit Issuance Section
U.S. Army District, Los Angeles, Corps of Engineers - Permits Section
NOAA, National Marine Fisheries Service
U.S. Fish and Wildlife Service - Carlsbad
State Water Resources Control Board - Jorge Leon/Elizabeth Miller Jennings, Office of the Chief Counsel
State Water Resources Control Board - Bruce Fujimoto, Division of Water Quality
State Department of Water Resources - Glendale
California Regional Water Quality Control Board, North Coast Region (1) - John Short
California Regional Water Quality Control Board, San Francisco Bay Region (2) - Dale Boyer
California Regional Water Quality Control Board, Central Coast Region (3) - Jennifer Biting
California Regional Water Quality Control Board, Los Angeles Region (4) - Wendy Philips
California Regional Water Quality Control Board, Central Valley Region (5) - George D. Day
California Regional Water Quality Control Board, Central Valley Region (5R), Redding - Carole Crowe
California Regional Water Quality Control Board, Central Valley Region (5F), Fresno - Jarma Bennett
California Regional Water Quality Control Board, Lahonton Region (6SLT), South Lake Tahoe - Mary Fiore-Wagner
California Regional Water Quality Control Board, Lahonton Region (6V), Victorville - Gene Rodash
California Regional Water Quality Control Board, Colorado River Basin Region (7) - Abdi Haile/Pat Garcia
California Regional Water Quality Control Board, San Diego Region (9) - Bob Morris
State Department of Fish and Game - Long Beach
State Department of Health Services - San Bernardino
State Department of Parks and Recreation
South Coast Air Quality Management District, Diamond Bar
Orange County Environmental Management Agency, Environmental Resources Division - Christopher CromptonKaren Ashby Orange County Environmental Management Agency, Department of Public Works, Flood Programs - Herb Nakasone
San Bernardino County Flood Control District - Naresh Varma
Caltrans, District 8, San Bernardino - Paul Lambert
Southern Pacific Railroad
Atchison, Topeka & Santa Fe Railway Company
U.S. Department of the Air Force, March Air Force Base
Camp Dresser and McKee - Jeff Endicott
Building Industry Association - Tim Piasky
L.A. County Department of Public Works - Mustafa Ariki

U.S. Department of Agriculture - Forest Services, San Bernardino County National Forest

Environmental Organizations
Sierra Club, San Gorgonio Chapter
Natural Resources Defense Council (NRDC) - David Beckman/Heather Hoecherl
Tri-County Conservation League - Press Enterprise - Gary Polakovic
Santa Ana Watershed Project Authority - Joseph Grindstaff
Orange County Water District - Bill Mills
Metropolitan Water District - George Muse
Western Municipal Water District - Don Harriger
San Bernardino Valley Municipal Water District
Southern California Association of Governments, Los Angeles
Inland Empire West Resource Conservation District - General Manager
Big Bear Municipal Water District - General Manager
Inland Empire Utilities Agency - General Manager
Cucamonga County Water District - General Manager
East Valley Water District - General Manager
Monte Vista Water District - General Manager
West San Bernardino County Water District - Butch Araiz
Yucaipa Valley Water District - General Manager

Hospitals (Administrator)
Bear Valley Community Hospital
Chino Community Hospital
Doctors Hospital
Kaiser Foundation Hospital
Loma Linda Community Hospital
Loma Linda University Medical Center
Mountains Community Hospital
Ontario Community Hospital
Patton State Hospital
U.S. Department of Veterans Affairs - Memorial Veterans Medical Center
Redlands Community Hospital
St. Bernardine Medical Center
San Antonio Community Hospital
San Bernardino Community Hospital
San Bernardino County Hospital

Universities and Colleges (Chancellor)
California State University - California State University San Bernardino
San Bernardino Community College District - Chaffey College Campus
San Bernardino Community College District - Crafton Hills College Campus
San Bernardino Community College District - San Bernardino Valley College Campus
University of Redlands
Loma Linda University

School Districts (Superintendent)
Alta Loma Elementary School District
Bear Valley Unified School District
Central Elementary School District
Chaffey Joint Union High School District
Chino Unified School District
Colton Joint Unified School District
Cucamonga Elementary School District
Etiwanda Elementary School District
Fontana Unified School District
Mountain View Elementary School District
Mt. Baldy Joint Elementary School District
Ontario-Montclair Elementary School District
Rialto Unified School District
Rim of the World Unified School District
Redlands Unified School District
San Bernardino City Unified School District
Upland Unified School District
Yucaipa Joint Unified School District

Permittees
City of Big Bear Lake - Brian Gengler
City of Chino - David Crosley
City of Chino Hills - John Mura
City of Colton - Kathy Kivley
City of Fontana - Curtis Aaron
City of Grand Terrace - John Donlevey
City of Highland - Larry Williams
City of Loma Linda - Dennis Barton
City of Montclair - Mario Orioli
City of Ontario - Glen Stott
City of Rancho Cucamonga - Bob Zetterberg
City of Redlands - Tom Fujiwara
City of Rialto - Bruce Cluff
City of San Bernardino - Michael Grubbs
City of Upland - Steve Gapuzan
City of Yucaipa - Fred Hawkins
San Bernardino County Transportation/Flood Control Department - Naresh Varma
San Bernardino County - Jim Squire

(April 9, 2002 Draft)

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SANTA ANA REGION

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT

AND

WASTE DISCHARGE REQUIREMENTS

NPDES NO. CAS618036

ORDER NO. R8-2002-0012

FOR

THE SAN BERNARDINO COUNTY DEPARTMENT OF PUBLIC WORKS, THE COUNTY OF SAN BERNARDINO, AND THE INCORPORATED CITIES OF SAN BERNARDINO COUNTY WITHIN THE SANTA ANA REGION

AREA-WIDE URBAN STORM WATER RUNOFF

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), finds that:

1. The 1987 amendments to the Clean Water Act (CWA) added Section 402(p) that establishes a framework for regulating municipal and industrial (including construction) storm water discharges under the National Pollutant Discharge Elimination System (NPDES) permit. Section 402(p) of the CWA requires NPDES permits for storm water discharges from municipal separate storm sewer systems (MS4), as well as other designated storm water discharges that are considered significant contributors of pollutants to waters of the United States. On November 16, 1990, the United States Environmental Protection Agency (hereinafter EPA) published Phase I regulations (40 CFR Parts 122, 123 and 124), which describe permit application requirements for storm water discharges.

2. Prior to EPA's promulgation of the Phase I storm water regulations, the three counties (Orange, Riverside, and San Bernardino) and the incorporated cities within the jurisdiction of the Santa Ana Regional Board requested areawide NPDES permits for urban storm water runoff. On October 19, 1990, the Regional Board adopted Order No. 90-136 for urban storm water runoff from urban areas in San Bernardino County within the Santa Ana Region. The San Bernardino County Flood Control District was named as the principal permittee and San Bernardino County and the incorporated cities were named as the co-permittees. Order No 96-32, issued by the Regional Board on March 8, 1996, renewed the permit for another five years.

3. Order No. 96-32 expired on March 1, 2001. On September 1, 2000, the San Bernardino County Flood Control District, in cooperation with the County of San Bernardino, and the incorporated cities of Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, and Yucaipa (hereinafter collectively referred to as "permittees" or dischargers) jointly submitted NPDES Application No. CAS618036 and a Report of Waste Discharge for reissuance of their area-wide storm water permit for urban storm water runoff. The Report of Waste Discharge was submitted in accordance with Section V.29

of the previous NPDES permit (Order No. 96-32) as application for permit renewal. In order to more effectively carry out the requirements of this Order, the permittees agreed that the San Bernardino County Flood Control District (SBCFCD) would continue as the principal permittee and San Bernardino County and the incorporated cities would be co-permittees. On March 2, 2001, Order No. 96-32, NPDES No. CAS618036, was administratively extended in accordance with 40 CFR Part 122.6 and Title 23, Division 3, Chapter 9, §2235.4 of the California Code of Regulations.

4. Within the Santa Ana Region, the permittees serve a population of approximately 1.33 million, occupying an area of approximately 985 square miles. The latest figures obtained from the Reconnaissance Progress Report estimated 384 miles of above-ground and 334 miles of below-ground storm drain channels in the project area. Approximately seven percent (7%) of the San Bernardino County area drains into water bodies within this Regional Board's jurisdiction. The project area is shown on Attachment 1. Approximately 50% of the remaining San Bernardino County drainage areas are within the jurisdiction of the Lahontan Regional Board and the other 43% is within the jurisdiction of the Colorado River Basin Regional Board. However, urbanization in those areas is minimal compared to areas within the Santa Ana Regional Board's jurisdiction.

5. Runoff from the San Bernardino County drainage areas is generally conveyed to the Riverside County drainage areas through the Santa Ana River or other drainage channels tributary to the Santa Ana River. These flows are then discharged to Reach 2 of the Santa Ana River through Prado Basin (Reach 3 of the Santa Ana River). Most of the flow in Reach 2 is recharged in Orange County. During wet weather, some of the flow may be discharged to the Pacific Ocean through Reach 1 of the Santa Ana River.

6. The Santa Ana River Basin is the major watershed within this Region. This watershed is divided into the lower Santa Ana River, middle Santa Ana River, Chino basin, upper Santa Ana and Big Bear Lake watersheds. The lower Santa Ana River Basin (downstream from Prado Dam) includes the Orange County drainage areas, and the rest of the Santa Ana River Basin includes the San Bernardino County and the Riverside County drainage areas. The San Bernardino County drainage areas are generally upstream of the Riverside County drainage areas. Some of the main surface water bodies in San Bernardino County within areas regulated under this Order include:

   a. Santa Ana River, Reaches 4, 5, and 6,

   b. Cucamonga Creek,

   c. San Sevaine Channel,

   d. Lytle Creek,

   e. San Timoteo Creek,

f. Bear Creek,

g. Mill Creek (in San Bernardino area).

Surface water bodies in San Bernardino County within the jurisdiction of Santa Ana Region are listed in Attachment 2.

7. The beneficial uses of these water bodies include municipal and domestic supply, agricultural supply, industrial service supply, groundwater recharge, hydropower generation, water contact recreation, non-contact water recreation, and sportfishing, warm freshwater habitat, cold freshwater habitat, preservation of biological habitats of special significance, wildlife habitat and preservation of rare, threatened or endangered species. The ultimate goal of this storm water management program is to protect the beneficial uses of the receiving waters.

8. The three county areas within this Region are regulated under three area-wide permits for urban storm water runoff. These area-wide NPDES permits are:

   a. Orange County, NPDES No. CAS618030,

   b. Riverside County, NPDES No. CAS618033, and

   c. San Bernardino County, NPDES No. CAS618036.

   For an effective watershed management program, coordination among the regulators, the municipal permittees, the public, and other entities is essential.

9. Studies conducted by the EPA, the states, flood control districts and other entities indicate the following major sources for urban storm water pollution nationwide:

   a. Industrial sites where appropriate pollution control and best management practices (BMPs)[1] are not implemented;

   b. Construction sites where erosion and siltation controls and BMPs are not implemented; and

   c. Urban runoff where the drainage area is not properly managed.

10. A number of permits were adopted to address pollution from the sources identified in Finding 9, above. The State Board issued two statewide general NPDES permits: one for storm water runoff from industrial activities (NPDES No. CAS000001, General Industrial Activities Storm Water Permit) and the second one for storm water runoff from construction sites (NPDES No. CAS000002, General Construction Activity Storm Water Permit). Industrial activities (as identified in 40 CFR 122.26(b)(14) and construction sites on five acres or more, are required to obtain coverage under these statewide general permits. The permittees have developed project conditions of approval requiring coverage

[1] Best Management Practices (BMPs) are water quality management practices that are maximized in efficiency for the control of storm water runoff pollution.

under the State's General Permit for new developments to be implemented at the time of grading or building permit issuance for construction sites on five acres or more and at the time of local permit issuance for industrial facilities. The State Board also adopted Order No. 99-06-DWQ, NPDES No. CAS000003, for storm water runoff from facilities owned and/or operated by Caltrans (including freeways and highways). The Regional Board adopted Order 99-11, NPDES No. CAG018001, for concentrated animal feeding operations, including dairies. The Regional Board also issues individual storm water permits for certain industrial facilities within the Region. Currently there are 22 individual storm water NPDES permits in the Region; 10 of these facilities are located in the San Bernardino County area. Additionally, for a number of facilities that discharge process wastewater and storm water, storm water discharge requirements are included with their facilities' NPDES permit for process wastewater.

11. In most cases, the industries and construction sites covered under the Statewide General Industrial and Construction Permits discharge into storm drains and/or flood control facilities owned and operated by the permittees. These industries and construction sites are also regulated under local laws and regulations. Furthermore, the permittees authorize and permit developments within their jurisdiction, and they own, operate, and control the MS4 systems. The permittees approve residential, commercial, and industrial developments, and cause urbanization of the area and also benefit from it. Therefore, they have a responsibility to address any water quality problems resulting from this urbanization. The Regional Board administers compliance with the State's General Industrial Activities Storm Water Permit and the General Construction Activity Storm Water Permit. A coordinated effort between the permittees and the Regional Board staff is critical to avoid duplicative and overlapping efforts when overseeing the compliance of dischargers covered under the Statewide General Permits. As part of this coordination, the permittees have been notifying Regional Board staff when during their routine activities, they observe conditions that pose a threat or potential threat to water quality, or an industrial facility or construction activity that has failed to obtain coverage under the appropriate general storm water permit.

12. This Order regulates urban storm water runoff[2] from areas under the jurisdiction of the permittees. The term storm water as used in this Order includes storm water runoff, snowmelt runoff, and surface runoff and drainage. The permittees have jurisdiction over and/or maintenance responsibility for storm water conveyance systems within San Bernardino County. The permittees may lack legal jurisdiction over storm water discharges into their systems from some of the State and federal facilities, utilities and special districts, Native American tribal

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[2] Urban storm water runoff includes those discharges from residential, commercial, industrial and construction areas within the permitted area and excludes discharges from feedlots, dairies and farms.

lands, waste water management agencies and other point and non-point source discharges otherwise permitted by the Regional Board. The Regional Board recognizes that the permittees should not be held responsible for such facilities and/or discharges.

13. Certain activities that generate pollutants present in storm water runoff may be beyond the ability of the permittees to eliminate. Examples of these include operation of internal combustion engines, atmospheric deposition, brake pad wear, tire wear and leaching of naturally occurring minerals from local geography. This Order is intended to regulate the discharge of pollutants in urban storm water runoff from anthropogenic (generated from human activities) sources and is not intended to address background or naturally occurring pollutants or flows.

14. A major portion of San Bernardino County within the Santa Ana Regional Board jurisdiction is being urbanized with residential, commercial, and industrial developments. Urban development increases impervious surfaces and storm water runoff volume and velocity; and decreases vegetated pervious surface available for infiltration of storm water. Increase in runoff volume and velocity may cause scour, erosion (sheet, rill and/or gully), aggradation (raising of a streambed from sediment deposition), changes in fluvial geomorphology, hydrology, and changes in aquatic ecosystem. The local agencies (the permittees) are the owners and operators of the MS4 systems and have authority to control discharges to these systems. The permittees have established appropriate legal authority to control discharges into their respective MS4 systems. They adopted grading and/or erosion control ordinances, guidelines and best management practices (BMPs) for municipal, commercial, and industrial activities. The permittees must exercise a combination of these programs, policies, and legal authority to minimize pollutant loads resulting from urbanization.

15. If not properly controlled and managed, urbanization could result in the discharge of pollutants into storm water runoff. Urban area runoff (Finding 9.c.) may contain elevated levels of pathogens (bacteria, protozoa, viruses), sediment, trash, fertilizers (nutrients, nitrogen and phosphorus compounds), pesticides (DDT, chlordane, diazinon, chlorpyrifos), heavy metals (cadmium, chromium, copper, lead, zinc), and petroleum products (oil, grease, petroleum hydrocarbons, polycyclic aromatic hydrocarbons). Storm water can carry these pollutants to rivers, streams, lakes, bays and the ocean (receiving waters).

16. These pollutants can then impact the beneficial uses of the receiving waters and can cause or threaten to cause a condition of pollution or nuisance. Pathogens (from sanitary sewer overflows, septic system leaks, spills and leaks from portable toilets, pets, wildlife, and human activities) can impact water contact recreation, non-contact water recreation and shellfish harvesting. On a nationwide basis, microbial contamination of the beaches from urban runoff and other sources has resulted in beach closures and health advisories. Floatables

(from trash) are an aesthetic nuisance and can be a substrate for algae and insect vectors. Oil and grease can coat birds and aquatic organisms, adversely affecting respiration and/or thermoregulation. Other petroleum hydrocarbon components can cause toxicity to aquatic organisms and can impact human health. Suspended and settleable solids (from sediment, trash, and industrial activities) can be deleterious to benthic organisms and may cause anaerobic conditions to form. Sediments and other suspended particulates can cause turbidity, clog fish gills and interfere with respiration in aquatic fauna. They can also screen out light, hindering photosynthesis and normal aquatic plant growth and development. Toxic substances (from pesticides, herbicides, petroleum products, metals, and industrial wastes) can cause acute and/or chronic toxicity, and can bioaccumulate in aquatic resources (sediments and biota) to levels, which are harmful to human health. Nutrients (from fertilizers, confined animal facilities, pets, and birds) can cause excessive algal blooms. These blooms can lead to problems with taste, odor, color and increased turbidity, and can depress the dissolved oxygen content, leading to fish kills.

17. The water quality assessment conducted by Regional Board staff has identified a number of other beneficial use impairments from urban runoff. Section 303(b) of the CWA requires each of the regional boards to routinely monitor and assess the quality of waters of the region. If this assessment indicates that beneficial uses are not met, then that waterbody must be listed under Section 303(d) of the CWA as an impaired waterbody. The 1998 water quality assessment listed a number of water bodies within the Region under Section 303(d) as impaired waterbodies. In the San Bernardino County area, these include: (1) Big Bear Lake (listed for copper, mercury, metals, noxious aquatic plants, nutrients and sedimentation/siltation); (2) Summit Creek (listed for nutrients); (3) Knickerbocker Creek (listed for metals and pathogens); (4) Grout Creek (listed for metals and nutrients); (5) Rathbone Creek (listed for nutrients, sedimentation/siltation); (6) Mountain Home Creek (listed for pathogens); (7) Mill Creek, Reaches 1 and 2, (listed for pathogens); (8) Santa Ana River, Reach 4 (listed for pathogens); (9) Lytle Creek (listed for pathogens); (10) Chino Creek, Reaches 1 and 2 (listed for high coliform count); (11) Cucamonga Creek, Valley reach (listed for high coliform count); (12) Mill Creek (Prado Area) (listed for nutrients); and, (13) Prado Park Lake (listed for nutrients and pathogens). For some of these impaired waterbodies, the cause of impairment is listed as urban runoff.

18. Federal regulations require that a total maximum daily load (TMDL) be established for each 303(d) listed waterbody for each of the pollutants causing impairment. The TMDL is the total amount of the problem pollutant that can be discharged while water quality standards in the receiving water are attained, i.e. water quality objectives are met and the beneficial uses are protected. It is the sum of the individual wasteload allocations (WLA) for point source inputs, load allocations (LA) for non-point source inputs and natural background, with a margin of safety. The TMDLs are the basis for limitations established in waste

discharge requirements. TMDLs are being developed for sediment, pathogens, and nutrients and other pollutants for impaired water bodies in San Bernardino County. Dischargers to these water bodies are currently cooperating in the development of these TMDLs.

19. The MS4s generally contain non-storm water flows such as irrigation runoff, residential car washes, runoff from miscellaneous washing and cleaning operations, and other nuisance flows. Discharges of non-storm water containing pollutants into the MS4 systems and to waters of the U.S. are prohibited unless they are regulated under separate NPDES permit; or are exempt as indicated in Discharge Prohibition, Section III, Item 3 of this Order.

20. Order No. 90-136 (first term permit) required the permittees to develop and implement a drainage area management plan (DAMP) and a storm water and receiving water monitoring plan, to eliminate illegal and illicit discharges to the MS4s and to enact the necessary legal authority to effectively prohibit such discharges. The overall goal of these requirements was to reduce pollutant loading to surface waters from urban runoff to the maximum extent practicable (MEP)[3]. Order No. 96-32 (second term permit) required continued implementation of the DAMP and the monitoring plan, and required the permittees to focus on those areas which threaten the beneficial uses.

21. This Order (Order No. R8-2002-0012, third term permit) outlines additional steps for an effective storm water management program and specifies requirements to protect the beneficial uses of all receiving waters. This Order requires the permittees to examine sources of pollutants in storm water runoff from activities that the permittees conduct, approve, regulate and/or authorize by issuing a license or permit.

22. The Report of Waste Discharge (ROWD) submitted for the third term permit included the following major elements:

    a. Summary of accomplishments and water quality monitoring results during the second term permit;

    b. Proposed Municipal Storm Water Management Program (MSWMP) for the third term. (The MSWMP, included in the ROWD for the third term permit, replaces the DAMP from the first term permit);

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[3] Maximum Extent Practicable (MEP) means the standard for implementation of storm water management to reduce pollutants in storm water. CWA section 402(p)(3)(B)(iii) requires that municipal permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. Specifically, municipalities must choose effective BMPs, and reject applicable BMPs only where other effective BMPs will serve the same purpose..

c. Performance commitments for Proposed Program Elements;

d. Guidelines for New Development and Redevelopment; and

e. A revised Water Quality Monitoring Plan.

23. The permittees own and/or operate facilities where industrial or related activities take place that may have an impact on storm water quality. Some of the permittees also enter into contracts with outside parties to carry out municipal related activities that may also have an impact on storm water quality. These facilities and related activities include, but are not limited to, street sweeping, catch basin cleaning, maintenance yards, vehicle and equipment maintenance areas, waste transfer stations, corporation and storage yards, parks and recreational facilities, landscape and swimming pool maintenance activities, storm drain system maintenance activities and the application of herbicides, algaecides and pesticides. The permittees have prepared an environmental performance report for appropriate public facilities under their jurisdiction, and identified best management practices for those activities found to require pollution prevention measures. Non-storm water discharges from these facilities and/or activities could also affect water quality. This Order prohibits non-storm water discharges from public facilities unless the discharges are exempt under Section III, Discharge Limitations, 4 & 6 of this Order or are permitted by the Regional Board under an individual NPDES permit. The second term permit required the permittees to develop and implement a model Municipal Activities Pollution Prevention Strategy (MAPPS), including sewage spill response, maintenance practices at parks and recreation facilities, street sweeping and public agency employee training.

24. Successful implementation of the provisions and limitations in this Order will require the cooperation of other entities and all the public agency organizations within San Bernardino County (e.g., Fire Department, Building and Safety, Code Enforcement, Planning, etc.) having programs/activities that have an impact on storm water quality. Some of these organizations are not regulated under this Order. (A list of these organizations is included in Attachment 3.) As such, these organizations are expected to actively participate in implementing the San Bernardino County NPDES Storm Water Program. The permittees have developed inter-departmental training programs and have made commitments to conduct a certain number of these training programs during the term of this permit. If any entity such as those listed in Attachment 3 is determined to cause or contribute to violations of this Order, the Regional Board has the discretion and authority to require the non-cooperating entity to participate in this areawide permit or obtain individual storm water discharge permits, pursuant to 40 CFR 122.26(a). The permittees have developed an Implementation Agreement among the SBCFCD, the County and the cities. The Implementation Agreement establishes the responsibilities of each party and a funding mechanism for the shared costs, and recognizes the Management Committee.

25. The major focus of storm water pollution prevention is the development and implementation of appropriate MSWMP including best management practices (BMPs). The ultimate goal of the urban storm water management program is to support attainment of water quality consistent with the water quality objectives for the receiving waters in order to protect beneficial uses through the implementation of the MSWMP.

26. The MSWMP is a dynamic document and the permittees have implemented, or are in the process of implementing, the various elements of the MSWMP. During the second permit term, the DAMP for the San Bernardino County areawide permit was replaced by the MSWMP contained in the ROWD submitted in 1995. This Order requires the permittees to continue to implement the BMPs listed in the ROWD (2000) and the MSMWP; update or modify the MSWMP, when appropriate, consistent with the MEP and other applicable standards; and to effectively prohibit illegal and illicit discharges to the storm drain system.

27. Urban runoff contains pollutants from privately owned and operated facilities such as residences, businesses, private and/or public institutions, and commercial establishments. Therefore, a successful storm water management plan should include the participation and cooperation of the public, businesses, the permittees and the regulators. The ROWD (2000) has a strong emphasis on public education.

28. The San Bernardino County ROWD (2000) defined: (1) a management structure to facilitate permittees' compliance efforts; (2) a formal agreement to underpin cooperation; and (3) detailed municipal efforts to develop, implement, and evaluate various BMPs or control programs in the areas of public agency activities, public information, new development and construction, public works construction, industrial discharger identification, and illicit discharger/connection identification and elimination. The ROWD (2000) also defined a surface water quality monitoring program.

29. In order to characterize storm water discharges, to identify problem areas, to determine the impact of urban runoff on receiving waters, and to determine the effectiveness of the various BMPs, an effective monitoring program is critical. The principal permittee administers the monitoring program for the permittees. This program includes storm drain outfall monitoring, receiving water monitoring, and dry weather monitoring. The monitoring data from the last decade identified elevated pollutant levels at monitoring stations 2, 3, and 5. Drainage at Station 2 is influenced by mixed commercial and industrial land uses. Station 3 is characterized by mixed land uses including agricultural. Station 5 is influenced by commercial and light industrial land uses. These areas could be targeted for special pollutant source identification and control programs. The monitoring data indicated some spatial differences in water quality between San Bernardino County's major watersheds.

30. The Strategic Plan and Initiatives (June 22, 1995) and the 2001 Draft Strategic

Plan for the State Water Resources Control Board and the Regional Water Quality Control Boards recognize the importance of an integrated watershed management approach. The Regional Board also recognizes that a watershed management program should integrate all related programs, including the storm water programs and TMDL processes. Further, the State Board is required by SB 72 (Water Code Section 13383.5) to develop a statewide municipal storm water monitoring program. Consistent with this approach, some of the municipal storm water monitoring programs have already been integrated into regional monitoring programs. This Order requires the permittees to develop an integrated watershed monitoring program by July 1, 2003.

31. Illegal discharges[4] to the storm drains could contribute to storm water and other surface water contamination. A reconnaissance survey of the municipal storm drain systems (open channels and underground storm drains) was completed by the permittees. The permittees also developed a program to prohibit illicit connections to their storm drains and flood control facilities. Continued surveillance and enforcement of these programs are required to eliminate illicit connections and illegal discharges. The permittees have a number of mechanisms in place to eliminate illegal discharges to the MS4s, including industrial facility inspections, drainage facility inspections, water quality monitoring programs, and public education. The permittees also developed a summary format for illegal discharge reporting. During the second term permit, the permittees completed a reconnaissance survey of the MS4s to detect and eliminate any illicit connections (undocumented or unpermitted connections to the MS4s). The permittees have trained their staff on illegal discharge surveillance/cleanup procedures. The permittees will continue to monitor for any new illicit connections and will concentrate on preventing/cleanup of illegal discharges.

32. The permittees have the authority to control pollutants in storm water discharges, to prohibit illegal discharges/illicit connections, to control spills, and to require compliance and carry out inspections of the storm drain systems within their respective jurisdictions. The permittees have various forms of legal authority in place, such as charters, State Code provisions for General Law cities, the San Bernardino County Flood Control Ordinance, San Bernardino County Water Pollution Ordinance, various county ordinances which address industrial wastes and waste discharges within the unincorporated areas, city ordinances, and applicable portions of municipal codes and the State Water Code, to regulate storm water/urban runoff discharges.

33. In order to promote countywide consistency and to provide a legal underpinning

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[4] Illegal discharge means any discharge (or seepage) to the municipal separate storm sewer that is not composed entirely of storm water except for the authorized discharges listed in Section III of this permit. Illegal discharges include the improper disposal of wastes into the storm sewer system.

to the entire San Bernardino County Storm Water Program, a model Storm Drain Ordinance was completed in the first permit term and was adopted by all the permittees. The permittees are required to evaluate the effectiveness of their existing enforcement authority to determine the need for enhancement of their legal authority to administer civil and/or criminal penalties for violations of Storm Drain Ordinance.

34. Pollution prevention techniques, appropriate planning processes, and early identification of potential storm water impacts and mitigation measures can significantly reduce storm water pollution problems. During the second permit term, the permittees have completed the review and made the necessary revisions to consider storm water quality impacts and appropriate mitigation measures in the planning procedures and in the California Environmental Quality Act (CEQA) review process for specific projects, Master Plans, etc. The County of San Bernardino already requires a Water Quality Management Plan, which addresses permanent post-construction BMPs, in addition to the SWPPP required by the statewide general permit for construction activity. The permittees are encouraged to propose and participate in watershed-wide and/or regional water quality management programs.

35. Successful implementation of the provisions and limitations in this Order will require the cooperation of all the public agency organizations within San Bernardino County having programs/activities that have an impact on storm water quality (e.g. Fire Department, Building and Safety, Code enforcement, etc.). As such, these organizations are expected to actively participate in implementing this areawide storm water program.

36. In accordance with the Clean Water Act and its implementing regulations, this Order requires the permittees to develop and implement programs and policies necessary to minimize the discharge of pollutants in urban runoff to waters of the U. S. to the maximum extent practicable.

37. The legislative history and the preamble to the federal storm water regulations indicate that the Congress and the U.S. EPA were aware of the difficulties in regulating urban storm water runoff solely through traditional end-of-pipe treatment. However, it is the Regional Board's intent that this Order requires the implementation of best management practices to reduce to the maximum extent practicable the discharge of pollutants in storm water from the MS4s in order to support attainment of water quality standards. This Order, therefore, includes Receiving Water Limitations based on water quality objectives, prohibits the creation of nuisance and requires the reduction of water quality impairment in receiving waters. In accordance with Section 402 (p) of the Clean Water Act, this Order requires the permittees to implement control measures in accordance with the ROWD, that will reduce pollutants in storm water discharges to the maximum extent practicable. The Receiving Water Limitations similarly require the implementation of control measures to protect beneficial uses and attain water quality objectives of the receiving waters.

38. The Regional Board finds that the unique aspects of the regulation of storm water discharges through municipal storm sewer systems, including intermittent discharges, difficulties in monitoring and limited physical control over the discharge, will require adequate time to implement and evaluate the effectiveness of best management practices. Therefore, the permit includes a procedure for determining whether storm water discharges are causing or contributing to exceedances of receiving water limitations and for evaluating whether the MSWMP contained in the ROWD must be revised in order to comply with this aspect of the Order. The Order establishes an iterative process to determine compliance with the receiving water limitations.

39. The permittees are required to conduct inspections of construction sites, industrial facilities and commercial establishments. To avoid duplicative efforts, the permittees need not inspect facilities that have been inspected by Regional Board staff if the inspection was conducted during the specified time period. Regional Board staff inspection data will be posted regularly on its Internet site. It is anticipated that many of the inspections required under this Order can and will be carried out by inspectors currently conducting inspections for the permittees (i.e., grading, building, code enforcement, etc.), during their normal duties.

40. A revised Water Quality Control Plan (Basin Plan) was adopted by the Regional Board and became effective on January 24, 1995. The Basin Plan contains water quality objectives and beneficial uses for water bodies in the Santa Ana Region. The Basin Plan also incorporates by reference all State Board water quality control plans and policies including the 1990 Water Quality Control Plan for Ocean Waters of California (Ocean Plan) and the 1974 Water Quality Control Policy for Enclosed Bays and Estuaries of California (Enclosed Bays and Estuaries Plan).

41. The requirements contained in this Order are necessary to implement the plans and policies described in Finding 48, below. These plans and policies contain numeric and narrative water quality standards for the water bodies in this Region. This Order does not contain numeric effluent limitations for any constituents because the impact of the storm water discharges on the water quality of the receiving waters has not yet been fully determined. Continuation of water quality/biota monitoring and analysis of the data are essential to make that determination. The current Basin Plan, or any further changes to the Basin Plan, may be grounds for the permittees to revise some or all of its ROWD.

42. The permittees will be required to comply with any applicable future water quality standards or discharge requirements that may be imposed by the EPA or State of California prior to the expiration of this Order. This Order may be reopened to include TMDLs and/or other requirements developed and adopted by the Regional Board.

43. The permittees may petition the Regional Board to issue a separate NPDES permit to any discharger of non-storm water into storm drain systems that they

own or operate.

44. The permittees have developed a Storm Water Implementation Agreement between the County, its cities and the San Bernardino County Flood Control District. The Implementation Agreement established the responsibilities of each party and a funding mechanism for the shared costs and recognizes the establishment of a Management Committee for overall guidance and as a decision making body.

45. It is important to control litter and eliminate trash and other materials in stormwater runoff. In addition to the municipal ordinances prohibiting litter, the permittees also organize solid waste collection programs, household hazardous waste collections, and recycling programs to reduce litter and illegal discharges.

46. Reach 4 of the Santa Ana River which extends from Mission Boulevard in Riverside to the San Jacinto Fault in San Bernardino is an impaired water body listed on the 303(d) list for pathogens from non-point sources. These elevated levels may in part be attributed to discharges from the MS4 systems. This Order requires the permittees to investigate and characterize MS4 discharges to tributaries to the Santa Ana River, Reach 4, for potential bacterial contribution.

47. Public education is an important part of storm water pollution prevention. The permittees have employed a variety of means to educate the public, business and commercial establishments, industrial facilities and construction sites. The permittees are required to continue their efforts in public education programs.

48. The permittees established a subcommittee consisting of a number of permittees, the Building Industry Association, the development industry, the California Restaurant Association, and the Western States Petroleum Association and developed the "Guidelines for New Development and Redevelopment." The guidance document includes a list of routine structural and non-structural Best Management Practices for new developments. The permittees are implementing the BMPs from this guidance document and are requiring new developments and significant redevelopments to develop and implement appropriate Water Quality Management Plans (WQMP). This Order requires additional structural and non-structural BMPs for new developments and significant redevelopments only if an equivalent regional and/or watershed-wide management program is not being implemented.

49. The Regional Board and the permittees recognize the importance of watershed management initiatives and regional planning and coordination in the development and implementation of programs and policies related to water quality protection. A number of such efforts are underway where the permittees are active participants. This Order encourages continued participation in such programs and policies. The Regional Board also recognizes that in certain cases, diversion of funds targeted for certain monitoring programs to regional monitoring programs may be necessary. The Executive Officer is authorized to approve, after proper public notification and consideration of all comments

received, the watershed management initiatives, regional planning and coordination programs and regional monitoring programs.

50. The storm water regulations require public participation in the storm water management program development and implementation. As such the permittees are required to solicit and consider all comments received from the public and submit copies of the comments to the Executive Officer of the Regional Board. In response to public comments, the permittees may modify reports, plans, or schedules prior to submittal to the Executive Officer.

51. In accordance with California Water Code Section 13389, the issuance of waste discharge requirements for this discharge is exempt from those provisions of the California Environmental Quality Act contained in Chapter 3 (commencing with Section 21100), Division 13 of the Public Resources Code.

52. The Regional Board has considered anti-degradation requirements, pursuant to 40 CFR 131.12 and State Board Resolution 68-16, for the permitted discharges. This Order requires implementation of programs (i.e., BMPs) to reduce the level of pollutants in the storm water discharges. The combination of programs and policies required to be implemented under this Order for new and existing developments are designed to improve storm water quality. The Regional Board finds that the storm water discharges are consistent with the federal and state anti-degradation requirements and a complete anti-degradation analysis is not necessary.

53. The Regional Board has notified the permittees and interested parties of its intent to issue waste discharge requirements for this discharge and has provided them with an opportunity to submit their written views and recommendations.

54. The Regional Board, in a public hearing, heard and considered all comments pertaining to the discharge and to the tentative requirements.

IT IS HEREBY ORDERED that the permittees, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, and the provisions of the Clean Water Act, as amended, and the regulations and guidelines adopted thereunder, shall comply with the following:

I. RESPONSIBILITIES OF THE PRINCIPAL PERMITTEE:

The principal permittee shall be responsible for managing the overall storm water program and shall:

1. Conduct chemical, biological and bacteriological water quality monitoring as required by the Executive Officer of the Regional Board.

2. Implement management programs, monitoring programs, and related plans as required by this Order.

3. Prepare and submit to the Executive Officer of the Regional Board, unified reports, plans, and programs necessary to comply with this Order.

4. Coordinate and conduct Management Committee meetings as specified in the ROWD. The principal permittee will take the lead role in initiating and developing area-wide programs and activities necessary to comply with the NPDES Permit.

5. Coordinate permit activities and participate in any subcommittees formed as necessary, to coordinate compliance activities with this Order.

6. Provide technical and administrative support and inform the co-permittees of the progress of other pertinent municipal programs, pilot projects, research studies, and other information to facilitate implementation of co-permittees' storm water program.

7. Coordinate the implementation of area-wide storm water quality management activities such as monitoring program, public education, pollution prevention, etc.

8. Gather and disseminate information on the progress of statewide municipal storm water programs and evaluate the information for potential use in the execution of this Order.

9. Monitor the implementation of the plans and programs required by this Order and determine their effectiveness in attaining water quality standards. This determination shall include a comparative analysis of monitoring data to the USEPA Multi-Sector Permit Parameter Benchmark Values and applicable water quality objectives for inland surface streams. A pollutant source investigation and control plan shall be developed and implemented where elevated pollutant levels are identified. This plan shall be included in the annual report submitted to the Executive Officer.

10. Coordinate with the Regional Board activities pertaining to implementation of this Order, including the submittal of all reports, plans, and programs as required under this Order.

11. Solicit and coordinate public input for any major proposed storm water management programs and implementation plans.

12. Develop and implement mechanisms, performance standards, etc., to promote consistent implementation of BMPs among the permittees.

13. Cooperate in watershed management programs and regional and/or statewide monitoring programs.

14. Pursue enforcement actions as necessary within its jurisdiction to ensure compliance with storm water management programs, ordinances and implementation plans, including removal via enforcement authority of undocumented connections and prohibition of illegal discharges.

In addition, the activities of the principal permittee shall, at a minimum, include the following for MS4 systems owned and operated by the SBCFCD:

15. Conduct inspections and maintain the storm drain systems within its jurisdiction.

16. Review and revise, if necessary, policies and ordinances necessary to establish and maintain adequate legal authority, as required by the Federal Storm Water Regulations.

17. Respond to or arrange for responding to emergency situations such as accidental spills, leaks, illicit connections/illegal discharges, etc., to prevent or to reduce the discharges of pollutants to storm drain systems and waters of the U.S.

18. Take appropriate enforcement actions for illegal discharges to the MS4 systems within its jurisdiction.

19. In conjunction with the other permittees, implement the BMPs listed in the ROWD, and take such other actions as may be necessary to meet the MEP standard.

II. RESPONSIBILITIES OF THE CO-PERMITTEES

The co-permittees shall be responsible for managing the storm water program within their jurisdiction and shall:

1. Implement all program elements including but not limited to the management programs, monitoring programs, implementation plans and all BMPs outlined in the ROWD within each respective jurisdiction, and take such other actions as may be necessary to meet the MEP standard.

2. Enact and revise policies and ordinances necessary to establish and maintain adequate legal authority as stated in Section VI.1 of this Order and as required by the Federal Storm Water Regulations, 40CFR, Part 122.26(d)(2)(i)(A-F). By March 1, 2003, the permittees shall evaluate their ordinances to determine if they are authorized to impose administrative fines for storm water violations. Government Code Section 53069.4 authorizes cities to make violations of any ordinance subject to an administrative fine or penalty instead of criminal prosecution. If necessary, the permittees shall adopt ordinances to set a penalty structure and to authorize them to impose and collect fines administratively by March 1, 2004.

3. Conduct storm drain system inspections and maintenance in accordance with the uniform criteria developed by a subcommittee of the permittees.

4. Take appropriate enforcement actions for violations of the storm water regulations and ordinances for illegal discharges into the MS4 systems within the co-permitees' jurisdiction.

5. Prepare and submit to the principal permittee in a timely manner all required information necessary to develop a unified report for submittal to the Executive Officer of the Regional Board.

6. Designate at least one representative to the Management Committee and attend at least 9 out of the 11 Management Committee meetings per year. The principal permittee shall be notified immediately, in writing of any changes to the designated representative to the Management Committee.

7. Conduct and/or coordinate with the principal permittee any surveys and characterizations needed to identify pollutant sources from specific drainage areas.

8. Review and comment on all plans, strategies, management programs, monitoring programs, as developed by the principal permittee or any subcommittee to comply with this Order.

9. Participate in committees or subcommittees formed to address storm water related issues to comply with this Order.

10. Respond to or arrange for responding to emergency situations such as accidental spills, leaks, illegal discharges/illicit connections, etc. to prevent or reduce the discharge of pollutants to storm drain systems and waters of the U.S.

11. Pursue enforcement actions as necessary within its jurisdiction for violations of storm water ordinances, prohibitions on illicit connections and illegal discharges, and other elements of its storm water management program.

III. DISCHARGE LIMITATIONS/PROHIBITIONS

1. In accordance with the requirements of 40 CFR 122.26(d)(2)(I)B) and 40 CFR 122.26(d)(2)(I)(F), the permittees shall prohibit illicit connections and illegal discharges (non-storm water) from entering municipal separate storm sewer systems.

2. The discharge of storm water from permittees' municipal separate storm sewer systems to waters of the United States containing pollutants that have not been reduced to the maximum extent practicable is prohibited.

3. The permittees shall effectively prohibit the discharge of non-storm water into the MS4s unless such discharges are authorized by either a separate NPDES permit or as otherwise specified in this provision. The discharges identified below need not be prohibited by the permittees. If, however, any of these discharges are identified by the permittees or the Executive Officer as a significant source of pollutants, coverage under the Regional Board's De Minimis permit may be required.

   a. Discharges covered by NPDES permits or written clearances issued by the Regional or State Board,

   b. Potable water line flushing and other potable water sources,

   c. Air conditioning condensate,

   d. Landscape irrigation, lawn garden watering and other irrigation waters,

e. Passive foundation drains,

f. Passive footing drains,

g. Water from crawl space pumps,

h. Dechlorinated swimming pool discharges,

i. Non-commercial vehicle washing,

j. Diverted stream flows,

k. Rising ground waters and natural springs,

l. Ground water infiltration as defined in 40 CFR 35.2005 (20) and uncontaminated pumped groundwater,

m. Flows from riparian habitats and wetlands,

n. Emergency fire fighting flows (i.e., flows necessary for the protection of life and property) do not require BMPs and need not be prohibited. However, appropriate BMPs shall be considered where practicable when not interfering with health and safety issues (see also Section XIX, Provision 3);

o. Waters not otherwise containing wastes as defined in California Water Code Section 13050 (d), and

p. Other types of discharges identified and recommended by the permittees and approved by the Regional Board.

The Regional Board may issue Waste Discharge Requirements for discharges exempted from NPDES requirements, such as agricultural irrigation waters, if identified to be a significant source of pollutants. The Regional Board may add categories of non-storm water discharges that are not significant sources of pollutants or remove categories of non-storm water discharges listed above based upon a finding that the discharges are a significant source of pollutants.

4. For purposes of this Order, a discharge may include storm water or other types of discharges identified in item 3, above.

5. Non-storm water discharges from permittees' activities into waters of the U.S. are prohibited unless the non-storm water discharges are permitted by an NPDES permit or are included in Item 3, above.

6. The permittees shall reduce the discharge of pollutants, including trash and debris, from the storm water conveyance systems to the maximum extent practicable.

7. Discharges from the MS4s shall be in compliance with the discharge prohibitions contained in Chapter 5 of the Basin Plan.

8. Discharges from the MS4s of storm water, or non-storm water, for which a permittee is responsible, shall not cause or contribute to a condition of nuisance as that term is defined in Section 13050 of the Water Code.

IV. RECEIVING WATER LIMITATIONS

1. Discharges from the MS4s shall not cause or contribute to exceedances of receiving water quality standards (designated beneficial uses and water quality objectives) contained in the Basin Plan, and amendments thereto, for surface or groundwater.

2. The MSWMP and its components shall be designed to achieve compliance with receiving water limitations. It is expected that compliance with receiving water limitations will be achieved through an iterative process and the application of increasingly more effective BMPs. The permittees shall comply with Sections III.2 and IV of this Order through timely implementation of control measures and other actions to reduce pollutants in urban storm water runoff in accordance with the MSWMP and its components and other requirements of this Order, including any modifications thereto.

3. If exceedances of water quality objectives or water quality standards (collectively, WQS) persist, notwithstanding implementation of the MSWMP and other requirements of this Order, the permittees shall assure compliance with Sections III.2 and IV of this Order by complying with the following procedure:

   a. Upon a determination by either the permittees or the Executive Officer that the discharges from the MS4 systems are causing or contributing to an exceedance of an applicable water quality standard, the permittees shall promptly notify and thereafter submit a report to the Executive Officer that describes BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards. Determination of the effect of discharges from the MS4 systems on water quality standards shall include a comparative analysis of monitoring data to the USEPA Multi-Sector Permit Parameter Benchmark Values and applicable water quality objectives for inland surface streams as specified in Chapter 4 of the Basin Plan. A pollutant source investigation and control plan shall be developed and implemented where elevated pollutant levels are identified. The report shall address the causes of the impairment or exceedance, and the technical and economic feasibility of control actions available to the permittees to reduce or eliminate the impairment or exceedance. The report may be incorporated in the annual report unless the Executive Officer directs an earlier submittal. The report shall include an implementation schedule. The Executive Officer may require modifications to the report;

   b. Submit any modifications to the report required by the Executive Officer

within 30 days of notification;

c. Within 30 days following approval of the report described above by the Executive Officer, the permittees shall revise the storm water management programs and monitoring program to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required;

d. Implement the revised storm water management programs and monitoring program in accordance with the approved schedule.

So long as the permittees have complied with the procedures set forth above and are implementing the revised storm water management programs, the permittees do not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless the Executive Officer determines it is necessary to develop additional BMPs.

V. IMPLEMENTATION AGREEMENT

No later than July 1 of each year, the permittees shall evaluate the storm water management structure and the Implementation Agreement and determine the need for any revision. The annual report shall include the findings of this review and a schedule for any needed revisions.

VI. LEGAL AUTHORITY/ENFORCEMENT

1. The permittees shall maintain and enforce adequate legal authority to control contribution of pollutants to the MS4.
2. The permittees shall take appropriate enforcement actions against any violators of their codes and/or ordinances in accordance with the formalized enforcement procedures developed by the Management Committee.
3. Permittees' ordinances or other local regulatory mechanisms shall include sanctions for violations. Sanctions shall include but are not limited to: monetary penalties, non-monetary penalties, bonding requirements, and/or permit denials/revocations/stays for non-compliance. If the permittees' current ordinances do not have a provision for civil or criminal penalties for violations of their storm drain ordinances, the permittees shall enact such ordinances by March 1, 2004.
4. The permittees shall continue to provide notification to Regional Board staff regarding storm water related information gathered during site inspections of industrial and construction sites regulated by the Statewide General Storm Water Permits or sites which should be regulated under the State's General Permits. The notification should include any observed violations of the General Permits, prior history of violations, any enforcement actions taken by the permittee, and any other relevant information.

5. By November 15, 2003, the permittees shall review their storm drain ordinances and provide a report on the effectiveness of their ordinances and their enforcement, in prohibiting the following types of discharges to the MS4s (the permittees may propose appropriate control measures in lieu of prohibiting these discharges, where the permittees are responsible for ensuring that dischargers adequately maintain these control measures:

   a. Sewage, where a permittee operates the sewage collection system;

   b. Wash water resulting from the hosing or cleaning of gas stations, and other type of automobile service stations;

   c. Discharges resulting from the cleaning, repair, or maintenance of any type of equipment, machinery, or facility including motor vehicles, concrete mixing equipment, and portable toilet servicing;

   d. Wash water from mobile auto detailing and washing, steam and pressure cleaning, carpet cleaning, and other such mobile commercial and industrial operations;

   e. Water from cleaning of municipal, industrial, commercial, residential areas (including parking lots), streets, sidewalks, driveways, patios, plazas, work yards and outdoor eating or drinking areas containing chemicals or detergents and without prior sweeping;

   f. Runoff from material storage areas containing chemicals, fuels, grease, oil, or other hazardous materials,

   g. Discharges of pool or fountain water containing chlorine, biocides, or other chemicals; pool filter backwash containing debris and chlorine;

   h. Pet waste, yard waste, debris, sediment, and other wastes or materials that have potential adverse impacts on the water quality;

   i. Restaurant wastes such as grease, floor mat and trash bin wash water, food waste, and other food service wastes.

6. The principal permittee or subcommittee shall, on or before March 1, 2003, develop a restaurant inspection program which shall, at a minimum, address:

   a. Oil and grease disposal to verify that these wastes are not poured onto a parking lot, street or adjacent catch basin;

   b. Trash bin areas to verify that these areas are clean, the bin lids are closed, the bins are not filled with liquid, and the bins have not been washed out;

   c. Parking lot, alley, sidewalk and street areas to verify that floor mats, filters and garbage containers are not washed in those areas and that no washwater is discharged in those areas;

   d. Parking lot areas to verify that they are cleaned by sweeping, not by hosing down and that the facility operator uses dry methods for spill cleanup; and,

e. Inspection of existing devices designed to separate grease from wastewater (e.g., grease traps or interceptors) to ensure adequate capacity and proper maintenance.

7. By March 1, 2004, each permittee shall submit a statement (signed by its legal counsel) that the permittee has obtained all necessary legal authority to comply with this Order through adoption of ordinances and/or municipal code modifications.

VII. ILLEGAL DISCHARGE/ILLICIT CONNECTIONS; LITTER, DEBRIS AND TRASH CONTROL

1. The permittees shall continue to prohibit all illicit connections and illegal discharges to the MS4s through their ordinances, inspections, and monitoring programs. If routine inspections or dry weather monitoring indicate any illicit connections, they shall be investigated and eliminated or permitted within 60 days of discovery and identification. The permittees shall maintain a database that identifies both permitted and status of unpermitted connections resulting from routine inspections and dry weather monitoring. This information shall be updated on an ongoing basis and submitted annually beginning with the 2002-2003 annual report.

2. All reports of spills, leaks, and/or illegal dumping shall be promptly investigated. Those incidents that may pose an immediate threat to human health or the environment (e.g., sewage spills that could impact water contact recreation, an oil spill that could impact wild life, a hazardous substance spill where residents are evacuated, etc.) shall be reported to the Executive Officer within 24 hours by phone or e-mail, with a written report within 10 days. At a minimum, all sewage spills above 1,000 gallons and all reportable quantities of hazardous substance spills as per 40 CFR 117 and 302 shall be reported within 24 hours and all other spill incidents shall be included in the annual report. The permittees may propose a reporting program, including reportable incidents and quantities, jointly with other agencies such as the County Health/Fire Department for approval by the Executive Officer.

3. The permittees shall implement appropriate control measures to reduce and/or to eliminate the discharge of trash and debris to waters of the U.S. These control measures shall be reported in the annual report.

4. By July 1, 2003, the permittees shall review their litter/trash control ordinances to determine the need for any revision. The permittees are required to characterize trash, determine its main source(s), and develop and implement appropriate BMPs to control trash in urban runoff. The findings of this review, along with supporting field data shall be included in the 2002-2003 annual report.

5. By July 1, 2003, the permittees shall determine the need for any additional debris control measures. The findings shall be included in the 2002-2003 annual report.

VIII. MUNICIPAL INSPECTIONS OF CONSTRUCTION SITES

1. The permittees shall develop by January 31, 2003, an inventory of all construction sites within their jurisdiction for which building or grading permits are issued and activities at the site include: soil movement; uncovered storage of materials or wastes, such as dirt, sand, or fertilizer; or exterior mixing of cementaceous products, such as concrete, mortar, or stucco, regardless of whether the construction site is subject to the California Statewide General NPDES Permit for Storm Water Discharges Associated with Construction Activities (General Permit), or other individual NPDES permit. This database shall be updated prior to each rainy season thereafter. This inventory shall be maintained in a computer-based database system and shall include relevant information on site ownership, General Permit Waste Discharge Identification (WDID) # (if any), size, location, etc. Inclusion of a Geographical Information System (GIS) is recommended but not required.

2. To establish priorities for inspection requirements under this Order, the permittees shall prioritize construction sites within their jurisdiction as a high, medium, or low threat to water quality. Evaluation of construction sites should be based on such factors as soil erosion potential, project size, proximity and sensitivity of receiving waters and any other relevant factors. At a minimum, high priority construction sites shall include: sites over 50 acres; sites over 5 acres that are tributary to Clean Water Act section 303(d) waters listed for sediment or turbidity impairments; and sites that are tributary to and within 500 feet of an area defined by the Ocean Plan as an Area of Biological Significance (ASBS).

3. The permittees shall conduct construction site inspections for compliance with their ordinances (grading, Water Quality Management Plans, etc.), local permits (construction, grading, etc.). Inspections shall include a review of erosion control and BMP implementation plans and an evaluation of the effectiveness and maintenance of the BMPs identified. Inspection frequency will, at a minimum, include the following:

   a. During the wet season (i.e., October 1 through May 31 of each year), all high priority sites are to be inspected, in their entirety, once a month. All medium priority sites are to be inspected at least twice during the wet season. All low priority sites are to be inspected at least once during the wet season. When BMPs or BMP maintenance is deemed inadequate or out of compliance, an inspection frequency of once every week will be maintained until BMPs and BMP maintenance are brought into compliance. During the 2002-2003 wet season, prior to the development of the inventory database, all construction sites must be visited at least twice. If a site is deemed out of compliance, an inspection frequency adequate to bring the site into compliance must be maintained.

   b. During the dry season (i.e., June 1 through September 30 of each year), all construction sites shall be inspected at least once to determine the adequacy of sediment and other pollutant control measures.

c. Information, including at a minimum, inspection dates, inspectors present and the results of the inspection must be maintained in the database identified in Section VIII.1, above, or must be linked to that database. A copy of this database must be provided to the Regional Board with each annual report.

4. The permittees shall enforce their ordinances and permits at all construction sites as necessary to maintain compliance with this Order. Sanctions for non-compliance must include: monetary penalties, bonding requirements and/or permit denial or revocation.

5. Within 24 hours of discovery, the permittees shall provide oral or email notification to the Santa Ana Regional Water Quality Control Board of non-compliant sites, within their jurisdiction, that are determined to pose a threat to human health or the environment (e.g., sewage spills that could impact water contact recreation, an oil spill that could impact wild life, a hazardous substance spill where residents are evacuated, etc.). Following oral notification, a written report must be submitted to the Santa Ana Regional Water Quality Control Board within 10 days, detailing the nature of the non-compliance, any corrective action taken by the site owner, other relevant information (e.g., past history of non-compliance, environmental damage resulting from the non-compliance, site owner responsiveness) and the type of enforcement that will be carried out by the permittee. Further, incidences of non-compliance shall be recorded along with the information noted in the written report and the final outcome/enforcement for the incident in the database identified in Items 1 and 3c, above, or must be linked to these databases.

6. The inspectors responsible for verifying compliance at construction sites shall be trained in and have an understanding of: federal, state and local water quality laws and regulations as they apply to construction and grading activities; the potential effects of construction and urbanization on water quality; and, implementation and maintenance of erosion control BMPs and sediment control BMPs and the applicable use of both. The permittees shall have adequately trained their inspection staff by December 31, 2002, and on an annual basis, prior to the rainy season, thereafter. Training programs should be coordinated with the Santa Ana Regional Water Quality Control Board and prior notification of training shall be provided to Regional Board staff. New hires or transfers that will be performing construction inspections for the permittees must be trained within one month of starting inspection duties.

7. The permittees need not inspect facilities already inspected by Regional Board staff if the inspection was conducted within the specified time period.

IX. MUNICIPAL INSPECTIONS OF INDUSTRIAL FACILITIES

1. The permittees shall develop by July 1, 2003, an inventory of industrial facilities within their jurisdiction with business permits or other authorization by permittees that have the potential to discharge pollutants to the MS4. Facilities will be listed,

regardless of whether the facility is subject to the California Statewide General NPDES Permit for Storm Water Discharges Associated with Industrial Activities (General Industrial Permit), or other individual NPDES permit. This database must be updated on an annual basis. This inventory must be maintained in a computer-based database system and must include relevant information on ownership, Standard Industrial Classification (SIC) code(s), General Industrial Permit WDID # (if any), size, location, etc. Inclusion of a Geographical Information System (GIS) is recommended but not required.

2. To establish priorities for inspection requirements under this Order, the permittees shall prioritize industrial facilities within their jurisdiction as a high, medium, or low threat to water quality. Evaluation of these facilities should be based on such factors as type of industrial activities (SIC codes), materials or wastes used or stored outside, pollutant discharge potential, facility size, proximity and sensitivity of receiving waters and any other relevant factors. At a minimum, a high priority shall be assigned to: facilities subject to section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA); and facilities with a high potential for or history of unauthorized, non-storm water discharges.

3. The permittees shall conduct industrial facility inspections for compliance with its ordinances and permits. Inspections shall include a review of material and waste handling and storage practices, pollutant control BMP implementation and maintenance and evidence of past or present unauthorized, non-storm water discharges. All high priority facilities identified in Section IX.2 shall be inspected and a report on these inspections shall be submitted by November 15, 2003 and a report of inspections during subsequent years shall be included in the annual report for that year.

4. After July 1, 2003, all high priority sites are to be inspected at least once a year; all medium priority sites are to be inspected at least once every two years; and all low priority sites are to be inspected at least once per permit cycle. In the event that inappropriate material or waste handling or storage practices are observed, or there is evidence of past or present unauthorized, non-storm water discharges, an inspection frequency adequate to bring the site into compliance must be maintained (at a minimum, once a month or within the compliance schedule prescribed by the permittee in a written notice to the discharger). Once compliance is achieved, a minimum inspection frequency of once every four months will be maintained for the next calendar year.

5. By September 1, 2005, the permittees shall identify the remaining industrial facilities that do not have business permits or other authorization by the permittees. These facilities shall be added to the database identified in Section IX.1 and shall be prioritized in accordance with the specifications identified in Section IX.2.

6. Information including, at a minimum, inspection dates, inspectors present and the results of the inspection must be maintained in the database identified in Section

IX.1, above, or must be linked to that database. A copy of this database must be provided to the Regional Board with each annual report.

7. The permittees shall enforce their ordinances and permits at all industrial facilities as necessary to maintain compliance with this Order. Sanctions for non-compliance must include: monetary penalties, bonding requirements and/or permit denial or revocation.

8. Within 24 hours of discovery, the permittees shall provide oral or email notification to the Santa Ana Regional Water Quality Control Board of non-compliant facilities, within their jurisdiction, that are determined to pose a threat to human health or the environment; (e.g., sewage spills that could impact water contact recreation, an oil spill that could impact wild life, a hazardous substance spill where residents are evacuated, etc.). Following oral notification, a written report must be submitted to the Santa Ana Regional Water Quality Control Board within 10 days, detailing the nature of the non-compliance, any corrective action taken by the site owner, other relevant information (e.g., past history of non-compliance, environmental damage resulting from the non-compliance, facility owner responsiveness) and the type of enforcement that will be carried out by the permittee. Further, incidences of non-compliance shall be recorded along with the information noted in the written report and the final outcome/enforcement for the incident in the database identified in Section IX.1.

9. The inspectors responsible for verifying compliance at industrial and commercial facilities shall be trained in and have an understanding of: federal, state and local water quality laws and regulations as they apply to industrial activities; the potential effects of industrial discharge and urbanization on water quality; and implementation and maintenance of pollutant control BMPs. The permittees shall have adequately trained their inspection staff by July 1, 2003, and on an annual basis thereafter. Training programs should be coordinated with the Santa Ana Regional Water Quality Control Board and prior notification of training shall be provided to Regional Board staff. New hires or transfers that will be performing industrial and commercial inspections for the permittees must be trained within one month of starting inspection duties.

10. The permittees need not inspect facilities already inspected by Regional Board staff if the inspection was conducted within the specified time period.

X. MUNICIPAL INSPECTIONS OF COMMERCIAL FACILITIES

1. The permittees shall develop by July 1, 2003, an inventory of the following commercial facilities/companies listed below within their jurisdiction. This database must be updated on an annual basis. This inventory must be maintained in a computer-based database system and must include relevant information on ownership, size, location, etc. Inclusion of a Geographical Information System (GIS) is recommended but not required.

   a. Automobile mechanical repair, maintenance, fueling, or cleaning;

b. Automobile and other vehicle body repair or painting;

c. Mobile automobile or other vehicle washing;

d. Mobile carpet, drape or furniture cleaning;

e. Mobile high pressure or steam cleaning;

f. Painting and coating;

g. Nurseries and greenhouses;

h. Landscape and hardscape installation;

i. Pool, lake and fountain cleaning;

j. Other commercial sites/sources that the permittees determine may contribute a significant pollutant load to their MS4.

2. To establish priorities for inspection requirements under this Order, the permittees shall prioritize commercial facilities/companies within their jurisdiction as a high, medium, or low threat to water quality based on such factors as the type, magnitude, and location of the commercial activity, potential for discharge of pollutants to the MS4, and any history of unauthorized non-storm water discharges.

3. The permittees shall conduct commercial facility inspections for compliance with its ordinances and permits. Inspections shall include a review of material and waste handling and storage practices, pollutant control BMP implementation and maintenance, and evidence of past or present unauthorized, non-storm water discharges.

4. After July 1, 2003, the permittees shall establish inspection frequencies and priorities as determined by the threat to water quality prioritization described in X.2. In the event that inappropriate material or waste handling or storage practices are observed, or there is evidence of past or present unauthorized, non-storm water discharges, an inspection frequency adequate to bring the site into compliance must be maintained.

5. By July 1, 2004, all high priority sites shall have been inspected at least once.

6. Information including at a minimum, inspection dates, inspectors present and the results of the inspection must be maintained in the database identified in Section X.1, above, or must be linked to that database. A copy of this database must be provided to the Regional Board with each annual report.

7. The permittees shall enforce their ordinances and permits at commercial facilities. Sanctions for non-compliance must include: monetary penalties, bonding requirements and/or permit denial or revocation.

8. Within 24 hours of discovery, the permittees shall provide oral or email notification to the Santa Ana Regional Water Quality Control Board of non-compliant facilities, within their jurisdiction, that are determined to pose a threat

to human health or the environment; (e.g., sewage spills that could impact water contact recreation, an oil spill that could impact wild life, a hazardous substance spill where residents are evacuated, etc.). Following oral notification, a written report must be submitted to the Santa Ana Regional Water Quality Control Board within 10 days. All written reports shall detail the nature of the non-compliance, identify any corrective action taken by the site owner, and note other relevant information (e.g., past history of non-compliance, environmental damage resulting from the non-compliance, facility owner responsiveness) and the type of enforcement that will be carried out by the permittees. Further, incidences of non-compliance shall be recorded along with the information noted in the written report and the final outcome/enforcement for the incident in the database identified in Section X.1

9. The inspectors responsible for ensuring compliance at commercial facilities shall be trained in and have an understanding of: federal, state and local water quality laws and regulations as they apply to industrial and commercial activities; the potential effects of industrial discharge and urbanization on water quality; and, implementation and maintenance of pollutant control BMPs. The permittees shall have adequately trained their inspection staff by July 1, 2003 and on an annual basis thereafter. Training programs should be coordinated with the Santa Ana Regional Water Quality Control Board and prior notification of training shall be provided to Regional Board staff. New hires or transfers that will be performing commercial inspections for the permittees must be trained within one month of starting inspection duties.

XI. SEWAGE SPILLS, INFILTRATION INTO MS4 SYSTEMS FROM LEAKING SANITARY SEWER LINES, SEPTIC SYSTEM FAILURES, AND PORTABLE TOILET DISCHARGES

1. The Executive Officer will request the local sewering agencies to take the lead and develop a unified response guidance, in cooperation with the Principal Permittee. The Principal Permittee shall collaborate with the local sewering agencies to develop a unified response mechanism to respond to sewage spills that may have an impact on receiving water quality. The permittees shall provide local sanitation districts 24-hour access to the MS4s to address sewage spills. The permittees shall work cooperatively with the local sewering agencies to determine and control the impact of infiltration from leaking sanitary sewer systems on storm water quality.

2. By July 1, 2003, the permittees, whose jurisdictions have 50 or more septic tank sub-surface disposal systems in use, shall identify with the appropriate governing agency a mechanism to determine the effect of septic system failures on storm water quality and a mechanism to address such failures.

3. The principal permittee shall collaborate with the local sewering agencies to develop a unified response mechanism to respond to any sewage spills that may have an impact on receiving water quality. The Executive Officer will request the

local sewering agencies to take the lead and develop the unified response guidance, by no later than July 1, 2003, in cooperation with the principal permittee.

4. By July 1, 2003, the principal permittee shall review the permittees' current oversight programs for portable toilets to determine the need for any revision.

XII. NEW DEVELOPMENT (INCLUDING SIGNIFICANT RE-DEVELOPMENT)

A. GENERAL REQUIREMENTS

1. By October 15, 2002, the permittees shall establish a mechanism to ensure (prior to issuance of any local permits or other approvals) that all construction projects and industrial facilities that are required to obtain coverage under the State's General Storm Water Permits have filed with the State Board a Notice of Intent to be covered by the relevant General Permit. Applicants shall be required to provide a copy of the Waste Discharger Identification Number (WDID) issued by the State Board as evidence of coverage under the General Permit.

2. By September 1, 2002, the permittees shall review and modify the approval process for building, grading, and similar permits to include incorporation of BMPs as provided in the Guidelines for New Development and Redevelopment.

3. The permittees shall review and revise the storm water management program and implement any changes in the program, as necessary, in order to require construction site dischargers to reduce pollutants in runoff from construction sites during all construction phases. At a minimum, the program shall address:

   a. Pollution prevention measures and public education

   b. Grading Ordinance and any other local requirements

   c. Verification of coverage under the State's General Permit

   d. Prioritization and inspection of construction sites

   e. Procedures for reporting non-compliance

   f. Procedures for review and approval of WQMP.

      The permittees shall require applicants to prepare a WQMP in accordance with Appendix B of the ROWD and to incorporate identified structural and non-structural BMPs into the development.

   g. Implementation of the new development BMPs, or identification of wateshed or sub-watershed BMPs that new development projects could participate in.

4. The permittees shall review and revise the storm water management program and implement any changes in the program, as necessary in order to require

industrial/commercial site dischargers to reduce pollutants in runoff from new industrial/commercial sites. At a minimum, this program shall address:

a. Pollution prevention measures and public education

b. Source identification and prioritization

c. Monitoring and inspection of industrial/commercial sites

d. Verification of coverage under the State's General Permit

e. Enforcement of local ordinances and other requirements for industrial/commercial sites

f. Procedures for reporting non-compliance.

g. Procedures for review and approval of WQMP.

The permittees shall require applicants to prepare a WQMP in accordance with Appendix B of the ROWD and incorporate identified structural and non-structural BMPs into the development.

5. The permittees shall minimize the short and long-term impacts on receiving water quality from new developments and re-developments within its jurisdiction as required in Section B.1 below. In order to reduce pollutants and runoff flows from new developments and re-developments to the maximum extent practicable, permittees shall at a minimum:

a. Review General Plan/CEQA Processes to address storm water issues

b. Review and modify project approval process

c. Conduct public and business education.

6. By February 15, 2003, the permittees shall review their planning procedures and CEQA document preparation processes to ensure that storm water-related issues are properly considered and addressed. If necessary, these processes should be revised to consider and mitigate impacts to storm water quality. These changes may include revising the General Plan, modifying the project approval processes, including a section on urban runoff related water quality issues in the CEQA checklist, and conducting training for project proponents. The findings of this review and the actions taken by the permittees shall be reported to the Regional Board in the annual report for the corresponding year that the review is completed. All actions found necessary shall be completed by February 15, 2004 and reported in the annual report for the corresponding year. The following potential impacts shall be considered during CEQA review:

a. Potential impact of project construction on storm water runoff.

b. Potential impact of project's post-construction activity on storm water runoff.

c. Potential for discharge of storm water pollutants from areas of material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous materials handling or storage, delivery areas or loading docks, or other outdoor work areas.

d. Potential for discharge of storm water to affect the beneficial uses of the receiving waters.

e. Potential for significant changes in the flow velocity or volume of storm water runoff to cause environmental harm.

f. Potential for significant increases in erosion of the project site or surrounding areas.

7. By July 1, 2004, the permittees shall review their watershed protection principles and policies in their General Plan or related documents (such as Development Standards, Zoning Codes, Conditions of Approval, Development Project Guidance) to ensure that these principles and policies are properly considered and are incorporated into these documents. The findings of this review and the actions taken by the permittees shall be reported to the Regional Board by November 15, 2004. These principles and policies shall include the following considerations:

a. Limit disturbance of natural water bodies and drainage systems; conserve natural areas; protect slopes and channels; minimize impacts from storm water and urban runoff on the biological integrity of natural drainage systems and water bodies;

b. Minimize changes in hydrology and pollutant loading; require incorporation of controls including structural and non-structural BMPs to mitigate any projected increases in pollutant loads and flows; ensure that post-development runoff rates and velocities from a site do not adversely impact downstream erosion, stream habitat; minimize the quantity of storm water directed to impermeable surfaces and the MS4s; maximize the percentage of permeable surfaces to allow more percolation of storm water into the ground;

c. Preserve wetlands, riparian corridors, and buffer zones; establish reasonable limits on the clearing of vegetation from the project site;

d. Encourage the use of water quality wetlands, biofiltration swales, watershed-scale retrofits, etc., where such measures are likely to be effective and technically and economically feasible;

e. Provide for appropriate permanent measures to reduce storm water pollutant loads in storm water from the development site; and

f. Establish development guidelines for areas particularly susceptible to erosion and sediment loss.

8. Each permittee shall provide the Regional Board with the draft amendment or revision when a pertinent General Plan element or the General Plan is noticed for comment in accordance with Government Code Section 65350 et seq.

9. By September 1, 2003, the permittees shall review and, as necessary, revise their current grading/erosion control ordinances in order to reduce erosion caused by new development or significant re-development projects.

10. The permittees shall, through conditions of approval, ensure proper maintenance and operation of any permanent flood control structures installed in new developments. The parties responsible for the maintenance and operation of the facilities, and a funding mechanism for operation and maintenance shall be identified prior to approval of the project.

11. By November 15, 2003, the principal permittee shall submit a proposal for a study to evaluate the effectiveness of a group of selected BMPs for controlling erosion during new development. Based on the results of this study, one or more BMPs will be identified as (a) County-preferred BMP(s) for erosion control during new development. This proposal shall include details of the new development project site, the BMPs selected for the study, and a proposed schedule. The proposal and final BMP selection shall be approved by the Regional Board Executive Officer and the study shall be completed by the end of this permit term.

12. The permittees shall continue to implement BMPs for new development and for public works construction.

13. By July 1, 2003, the permittees shall review their Guidelines for New Development and Redevelopment to determine the need for any revisions.

B. WATER QUALITY MANAGEMENT PLAN (WQMP) FOR URBAN RUNOFF (FOR NEW DEVELOPMENT/SIGNIFICANT RE-DEVELOPMENT)

1. By July 1, 2003, the permittees shall review their existing BMPs for new developments and submit for review and approval by the Executive Officer, a revised WQMP for urban runoff from new developments/significant re-developments for the type of projects listed below:

   a. All significant re-development projects. Significant re-development is defined as the addition or creation of 5,000 or more square feet of impervious surface on an already developed site. This includes, but is not limited to, additional buildings and/or structures, extension of existing footprint of a building, construction of parking lots, etc. Where redevelopment results in an increase of less than fifty percent of the impervious surfaces of a previously existing development, and the existing development was not subject to these SUSMPs, the design

standards apply only to the addition, and not the entire development.

b. Home subdivisions of 10 units or more. This includes single family residences, multi-family residence, condominiums, apartments, etc.

c. Industrial/commercial developments of 100,000 square feet or more. Commercial developments include non-residential developments such as hospitals, educational institutions, recreational facilities, mini-malls, hotels, office buildings, warehouses, and light industrial facilities.

d. Automotive repair shops (with SIC codes 5013, 5014, 5541, 7532-7534, 7536-7539).

e. Restaurants where the land area of development is 5,000 square feet or more.

f. Hillside developments of 10,000 square feet or more which are located on areas with known erosive soil conditions or where the natural slope is twenty-five percent or more.

g. Developments of 2,500 square feet of impervious surface or more adjacent to (within 200 feet) or discharging directly into environmentally sensitive areas such as areas designated in the Ocean Plan as areas of special biological significance or waterbodies listed on the CWA Section 303(d) list of impaired waters.

h. Parking lots of 5,000 square feet or more exposed to storm water. Parking lot is defined as land area or facility for the temporary storage of motor vehicles.

2. The permittees are encouraged to include in the WQMP the development and implementation of regional and/or watershed management programs that address runoff from new development and significant re-development. The WQMP shall include BMPs for source control, pollution prevention, and/or structural treatment BMPs. For all structural treatment controls, the WQMP shall identify the responsible party for maintenance of the treatment systems, and a funding source or sources for its operation and maintenance. The goal of the WQMP is to develop and implement programs and policies to minimize the effects of urbanization on site hydrology, urban runoff flow rates or velocities and pollutant loads. This goal may be achieved through watershed-based structural treatment controls, in combination with site-specific BMPs. The WQMP shall reflect consideration of the following goals, which may be addressed through on-site and/or watershed based BMPs.

   a. The pollutants in post-development runoff shall be reduced using controls that utilize best available technology (BAT) and best conventional technology (BCT).

b. The discharge of any listed pollutant to an impaired waterbody on the 303(d) list shall not cause or contribute to an exceedance of receiving water quality objectives.

3. Pending revision of the WQMP requirements, the permittees shall implement their proposed program detailed in Section 4 of the ROWD. If the Executive Officer does not approve the revised WQMP by December 1, 2003, as meeting the goals proposed in Section XII.B.2, above, and providing an equivalent or superior degree of treatment as the sized criteria outlined below, structural BMPs shall be required for all new development and significant redevelopment[5]. Minimum structural BMPs must either be sized to comply with one of the following numeric sizing criteria or be deemed by the principal permittee to provide equivalent or superior treatment, either on a site basis or a watershed basis:

a. Volume

Volume-based BMPs shall be designed to infiltrate or treat either:

1) The volume of runoff produced from a 85th percentile 24-hour storm event, as determined from the local historical rainfall record[6]; or

2) The volume of annual runoff produced by the 85th percentile 24-hour rainfall event, determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87 (1998); or

3) The volume of annual runoff based on unit basin storage volume, to achieve 80% or more volume treatment by the method recommended in California Stormwater Best Management Practices Handbook – Industrial/commercial (1993); or

4) The volume of runoff, as determined from the local historical rainfall record, that achieves approximately the same reduction in pollutant loads and flows as achieved by mitigation of the 85th percentile 24-hour runoff event;

OR

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[5] Where new development is defined as projects for which tentative tract or parcel map approval was not received by December 1, 2003 and new re-development is defined as projects for which all necessary permits were not issued by December 1, 2003. However, projects that have not commenced grading by the initial expiration date of the tentative tract or parcel map approval shall be deemed a new development project as defined in this section. New development does not include projects receiving map approvals after December 1, 2003 that are proceeding under a common scheme of development that was the subject of a tentative tract or parcel map approval that occurred prior to December 1, 2003.

[6] The Permittees are encouraged to calculate the 85th percentile storm event for each of their jurisdictions using local rain data pertinent to their jurisdiction.

b. Flow

Flow-based BMPs shall be designed to infiltrate or treat either:

1) The maximum flow rate of runoff produced from a rainfall intensity of 0.2 inch of rainfall per hour; or

2) The maximum flow rate of runoff produced by the 85th percentile hourly rainfall intensity, as determined from the local historical rainfall record, multiplied by a factor of two; or

3) The maximum flow rate of runoff, as determined from the local historical rainfall record, that achieves approximately the same reduction in pollutant loads and flows as achieved by mitigation of the 85th percentile hourly rainfall intensity multiplied by a factor of two.

The permittees may propose any equivalent sizing criteria for treatment BMPs or other controls that will achieve greater or substantially similar pollution control benefits. In the absence of approved equivalent sizing criteria, the permittees shall implement the above stated sizing criteria. If a particular BMP is not technically feasible, other BMPs should be implemented to achieve the same level of compliance or if the cost of BMP implementation greatly outweighs the pollution control benefits, the permittees may grant a waiver of the numeric sizing criteria. All waivers, along with waiver justification documentation must be reported to the Regional Board in writing within 30 days. The permittees may propose to establish an urban runoff fund to be used for urban water quality improvement projects within the same watershed that is funded by contributions from developers granted waivers. If it is determined by the Regional Board that waivers are being inappropriately granted, this Order may be reopened to modify these waiver conditions.

The obligation to install minimum structural BMPs at new development is met if, for a common scheme of development, BMPs are constructed with the requisite capacity to serve the entire common scheme, even if certain phases of the common scheme may not have BMP capacity located on that phase in accordance with the requirements specified above.

C. GROUNDWATER PROTECTION

Any structural infiltration BMPs shall meet the following minimum requirements:

1. Use of structural infiltration treatment BMPs shall not cause or contribute to an exceedance of groundwater water quality objectives.

2. Source control and pollution prevention control BMPs shall be implemented to protect groundwater quality.

3. Structural infiltration treatment BMPs shall not be used in industrial or high vehicular traffic areas (25,000 or greater average daily traffic).

4. Structural infiltration treatment BMPs shall be located at least 100 feet horizontally from any water supply wells.

5. The vertical distance from the bottom of any infiltration structural treatment BMP to the historic high groundwater mark shall be at least 10 feet.

6. Structural infiltration treatment BMPs shall not cause a nuisance or pollution as defined in Water Code Section 13050.

XIII. PUBLIC EDUCATION AND OUTREACH

1. The permittees shall continue to implement the public education efforts already underway and shall implement all elements of the comprehensive public and business education strategy contained in the ROWD. By October 30, 2002, the permittees shall complete a public awareness survey to determine the effectiveness of the current public and business education strategy.

2. When feasible, the permittees shall participate in a joint outreach with other programs including, but not limited to, the State of California Storm Water Quality Task Force, Caltrans, and other municipal storm water programs to ensure that a consistent message on storm water pollution prevention is disseminated to the public. The permittees shall sponsor or staff a storm water table or booth at community, regional, and/or countywide events to distribute public education materials to the public. Each permittee shall participate in at least one event per year.

3. By January 15, 2003, the Management Committee shall make recommendations for any changes to the public and business education program. The goal of the public and business education program shall be to target 100% of the residents including businesses, commercial and industrial establishments. Through use of local print, radio and television, the permittees must ensure that the public and business education program makes a minimum of 5 million impressions per year and that those impressions measurably increase the knowledge and measurably change the behavior of the targeted groups. By January 15, 2003, the Management Committee shall propose a study for measuring changes in knowledge and behavior as a result of the education program. Upon approval by the Regional Board Executive Officer, the study shall be completed by the end of the permit cycle. The Committee shall ensure implementation of BMPs listed in the ROWD (Appendix C) for restaurants, automotive service centers, gasoline service stations and other similar facilities. The permittees shall distribute these BMP brochures or fact sheets to these facilities during inspections and/or through other means. Further, for restaurant, automotive service centers, and gasoline service station corporate chains, information is to be developed that will be provided to corporate environmental managers during outreach visits that will take place during the permit term.

4. By September 15, 2002, the permittees shall develop public education materials to encourage the public to report (including a hotline telephone number to report)

illegal dumping from residential, industrial, construction and commercial sites into public streets, storm drains and other waterbodies, clogged storm drains, faded or missing catch basin stencils and general storm water and BMP information. This hotline and website shall be included in the public and business education program and shall be listed in the governmental pages of all regional phone books.

5. By September 1, 2003, the permittees shall develop BMP guidelines for the control of those potentially polluting activities not otherwise regulated by any agency including guidelines for the household use of fertilizers, pesticides, herbicides, and other chemicals, guidelines for mobile vehicle maintenance activities, carpet cleaners, commercial landscape maintenance, and pavement cutting. These guidelines shall be distributed to the public, trade associations, etc., through participation in community events, trade association meetings, and/or mail.

6. By September 1, 2003, the permittees shall conduct an evaluation to determine the best method of establishing a mechanism(s) for providing educational and General Industrial Permit materials to businesses within their jurisdiction. These mechanism(s) for distributing educational materials to businesses shall be implemented by March 1, 2004.

XIV. MUNICIPAL FACILITIES/ACTIVITIES

1. Each permittee shall adopt the performance goals and implement the commitments included under Section 5.5 of the ROWD to prevent public agency facilities and activities from causing or contributing to a pollution or nuisance in receiving waters.

2. By September 1, 2003, the permittees shall complete an assessment of their flood control facilities to evaluate opportunities to configure and/or to reconfigure channel segments to function as pollution control devices and to optimize beneficial uses. These modifications may include in-channel sediment basins, bank stabilization, water treatment wetlands, etc. This shall be reported in the 2002-2003 annual report.

3. By July 1, 2003, the permittees, in coordination with the San Bernardino County Fire Chiefs Association, shall develop a list of appropriate BMPs to be implemented to reduce pollutants from training activities, fire hydrant/sprinkler testing or flushing, non-emergency fire fighting, and any BMPs feasible for emergency firefighting flows.

4. By October 1, 2002, the Management Committee shall develop and distribute to all permittees a BMP fact sheet to address public agency activities such as road construction and maintenance, street sweeping, catch basin stenciling, drainage facility cleaning and maintenance, etc. This shall be reported in the 2002-2003 annual report.

5. By September 1, 2002, the Management Committee shall develop and distribute BMP guidelines for public agency and contract field operations and maintenance staff. These guidelines shall describe appropriate pollution control measures, appropriate response to spills and illegal discharges, etc. Contractor training requirements shall be included in new contracts and contracts that come up for renewal. This shall be reported in the 2002-2003 annual report.

6. At least on an annual basis, each permittee shall provide training to public agency staff and to contract field operations staff on fertilizer and pesticide management, model maintenance procedures, and implementation of other pollution control measures. Each permittee shall designate key staff involved in public agency activities to attend at least three such training sessions during the five-year term of this permit (from 2002-2007).

7. By July 1, 2003, the Management Committee shall evaluate the efficiency and cost effectiveness of the available BMPs for litter control and develop recommendations for any needed improvements. This shall be reported in the 2002-2003 annual report.

8. Each permittee shall identify areas that are not subject to street sweeping due to lack of continuous curb and gutter, and evaluate their potential for impacting storm water quality. Appropriate BMPs shall be implemented where significant water quality impact is identified. This shall be reported in the 2002-2003 annual report.

9. Each permittee shall inspect all of their inlets, open channels, and basins at least once during each reporting year and maintain at least 80% of its drainage facilities on an annual basis, with 100% of the facilities included in a two-year period, using the BMP fact sheet developed by the Management Committee. The inspection and maintenance frequency for all or portions of the drainage facilities shall be evaluated annually to determine the need for increasing the inspection and maintenance frequency. This information shall be included in the annual report.

10. Each permittee shall clean those drainage facilities where the inspection reveals that the sediment/storage volume is 25% full, or where there is evidence of illegal discharge or if accumulated sediment or debris impairs the hydraulic capacity of the facility.

11. Successful implementation of the provisions in this Order will require the cooperation of all the public agency organizations within San Bernardino County having programs/activities that have an impact on storm water quality (e.g., Fire Department, Department of Environmental Health, Planning Department, Transportation Department, Parks and Recreation, Building and Safety, Code Enforcement, etc.) As such, these organizations are expected to actively participate in implementing this area-wide storm water program. The permittees shall be responsible for involving the public agencies in their storm water program.

XV. MUNICIPAL CONSTRUCTION PROJECTS/ACTIVITIES

1. This Order authorizes the discharge of storm water runoff from construction projects that may result in land disturbance of five (5) acres or more (or less than five acres, if it is part of a larger common plan of development or sale which is five acres or more) that are under ownership and/or direct responsibility of any of the permittees.

2. No later than March 10, 2003 or as specified in the latest version of the State General Stormwater Construction Permit, the permittees shall comply with the requirements for municipal construction projects that may result in land disturbance greater than one acre.

3. Prior to commencement of construction activities, the permittees shall notify the Executive Officer of the Regional Board of the proposed construction project. Upon completion of the construction project, the Executive Officer shall be notified of the completion of the project.

4. The permittees shall develop and implement a storm water pollution prevention plan (SWPPP) and a monitoring program that is specific for the construction project prior to the commencement of any of the construction activities. The SWPPP shall be kept at the construction site and released to the public and/or Regional Board staff upon request.

5. The SWPPP and the monitoring program for the construction projects shall be consistent with the requirements of the latest version of the State's General Construction Activity Storm Water Permit.

6. The permittees shall give advance notice to the Executive Officer of the Regional Board of any planned changes in the construction activity, which may result in non-compliance with the latest version of the State's General Construction Activity Storm Water Permit.

7. All other terms and conditions of the latest version of the State's General Construction Activity Storm Water Permit shall be applicable.

XVI. PROGRAM MANAGEMENT/MSWMP REVIEW

1. By October 1 of each year, the permittees shall evaluate the MSWMP to determine the need for any revisions. At a minimum, the first annual review after adoption of this Order shall include:

   a. A description of any additional formal training needs for municipal employees.

   b. A description of the need for additional coordination meeting/training for the designated NPDES inspectors.

2. The annual report submitted each year shall include the findings of the MSWMP review and a schedule for any needed revisions.

3. The permittees shall modify the MSWMP, at the direction of the Regional Board Executive Officer, to, as necessary, incorporate additional provisions. Such provisions may include regional and watershed-specific requirements and/or waste load allocations developed and approved pursuant to the TMDL process for impaired water bodies.

4. The Management Committee will continue to meet at least 11 times a year to discuss issues related to permit implementation and regional and statewide issues. Each permittee's designated representative or a designated alternate should attend not less than 9 out of 11 meetings.

XVII. FISCAL RESOURCES

The permittees shall provide adequate funding for administration, implementation and enforcement of the areawide storm water management program elements and local storm water programs. The permittees shall prepare and submit a unified fiscal analysis to the Executive Officer of the Regional Board. The fiscal analysis shall be submitted with the Annual Report each year and shall, at a minimum, include the following:

1. Each permittee's expenditures for the previous fiscal year,

2. Each permittee's budget for the current fiscal year,

3. A description of the source of funds, and

4. Each permittee's estimated budget for the next fiscal year.

XVIII. PROVISIONS

GENERAL

1. All reports submitted by the permittees as per the requirements in this Order for the approval of the Executive Officer shall be publicly noticed and made available on the Regional Board's website, or through other means, for public review and comments. The Executive Officer shall consider all comments received prior to approval of the reports. Any unresolved issues shall be scheduled for a public hearing at a Regional Board meeting prior to approval by the Executive Officer.

2. The purpose of this Order is to require the implementation of best management practices to reduce, to the maximum extent practicable, the discharge of pollutants from the MS4 in order to support reasonable further progress towards attainment of water quality objectives.

3. Permittees shall demonstrate compliance with all the requirements in this Order and specifically with Section III. Discharge Limitations, and Section IV. Receiving Water Limitations, through timely implementation of their MSWMP, its components and any modifications, revisions, or amendments developed pursuant to this Order approved by the Executive Officer or determined by the permittee to be necessary to meet the requirements of this Order. The MSWMP and its components, as

included in the ROWD, including any approved amendments thereto is hereby made an enforceable component of this Order.

4. Certain BMPs implemented or required by the permittees for urban runoff management may create habitat for vectors (e.g., mosquitoes and rodents) if not properly designed and maintained. Close collaboration and cooperative effort between the permittees and local vector control agencies and the State Department of Health Services during the development and implementation of urban runoff management programs are necessary to minimize potential vector habitat and public health impacts resulting from vector breeding. Nothing in this permit is intended to prohibit inspection or abatement of vectors by the State or local vector control agencies in accordance with the respective Health and Safety Code.

5. The permittees shall, at a minimum, implement all elements of the MSWMP and its components, as included in the ROWD. Where the dates are different from the corresponding dates in this Order, the dates in this Order shall prevail. Any proposed revisions to the MSWMP shall be submitted with the Annual Report to the Executive Officer of the Regional Board for review and approval. All approved revisions to the MSWMP shall be implemented as per the time schedules approved by the Executive Officer. In addition to those specific controls and actions required by: (1) the terms of this Order and (2) the MSWMP and its components, each permittee shall implement additional controls, if any are necessary, to reduce the discharge of pollutants in storm water to the maximum extent practicable as required by this Order.

6. The permittees shall comply with Monitoring and Reporting Program No. R8-2002-0012 and any revisions thereto, which are hereby made a part of this Order. The Executive Officer is hereby authorized to revise the Monitoring and Reporting Program in a manner consistent with this Order to allow the permittees to participate in regional, statewide, national or other monitoring programs in lieu of or in addition to Monitoring and Reporting Program No. R8-2002-0012.

5. Upon approval by the Executive Officer of the Regional Board, all plans, reports and subsequent amendments required by this Order shall be implemented and shall become an enforceable part of this Order. Prior to approval by the Executive Officer, these plans, reports and amendments shall not be considered as an enforceable part of this Order.

6. The permittees shall report to the Executive Officer of the Regional Board:

   a. Any enforcement actions and discharges of storm or non-storm water, known to the permittees, which may have an impact on human health or the environment, and

   b. Any suspected or reported activities on federal, state, or other entity's land or facilities, where the permittees do not have any jurisdiction, and where the suspected or reported activities may be contributing pollutants to waters of the US.

7. The permittees shall immediately report any discharge that may endanger human health or the environment including any unauthorized discharge to the Executive Officer or his designee (909-782-3238, or by e-mail to: sw@rb8.swrcb.ca.gov) and to the Office of Emergency Services (1-800-852-7550). This reporting should be done by phone or e-mail as soon as the permittees become aware of the circumstances. A written report of the discharge or incident shall be submitted to the Executive Officer within five days.

8. The permittees shall not issue occupancy permits unless the applicant is informed of his obligation under the State's General Industrial Activities Storm Water Permit. The permittees shall not issue any grading permit for construction activities which will disturb five acres or more (or less than five acres, if it is part of a larger common plan of development or sale which is five acres or more or when Phase II requirements become effective) until proof of coverage with the State's General Construction Activity Storm Water Permit is verified. The proof of coverage may include a letter from the Regional Board office, a copy of the Notice of Intent, Waste Discharger Identification number, etc.

9. The permit application and special NPDES program requirements are contained in 40 CFR 122.21 (a), (b), (d)(2), (f), (p); 122.41 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l); and 122.42 (c), and are incorporated into this Order by reference.

XIX. PERMIT EXPIRATION AND RENEWAL

1. This Order expires on April 27, 2007 and the permittees must file a new Report of Waste Discharge (permit application) no later than 180 days in advance of such expiration date as application for issuance of new waste discharge requirements. The Report of Waste Discharge shall, at a minimum, include the following:

   a. Any revisions to the Report of Waste Discharge including, but not limited to, all the activities the permittees propose to undertake during the next permit term, goals and objectives of such activities, an evaluation of the need for additional source control and/or structural BMPs, any proposed pilot studies, etc.;

   b. Changes in land use and/or population including map updates;

   c. Any significant changes to the storm drain systems, outfalls, detention or retention basins or dams, and other controls including map updates of the storm drain systems; and

   d. Any new or revised program elements and compliance schedule(s) necessary to comply with Section IV of this Order.

2. This Order may be modified, revoked or reissued prior to its expiration date for the following reasons:

   a. To address significant changes in conditions identified in the technical reports required by the Regional Board which were unknown at the time of

the issuance of this Order;

b. To incorporate applicable requirements of statewide water quality control plans adopted by the State Water Resources Control Board or any amendments to the Basin Plan approved by the Regional Board, the State Board, and, if necessary, by the Office of Administrative Law;

c. To comply with any applicable requirements, guidelines, or regulations issued or approved under the Clean Water Act, if the requirements, guidelines, or regulations contain different conditions or additional requirements than those included in this Order; or

d. To incorporate any requirements imposed upon the permittees through the TMDL process.

3. This Order shall serve as an NPDES Permit pursuant to Section 402 (p) of the Clean Water Act, or amendments thereto, and shall become effective ten days after the date of its adoption provided the Regional Administrator of the U. S. EPA has no objections. If the Regional Administrator objects to its issuance, the permit shall not become effective until such objection is withdrawn.

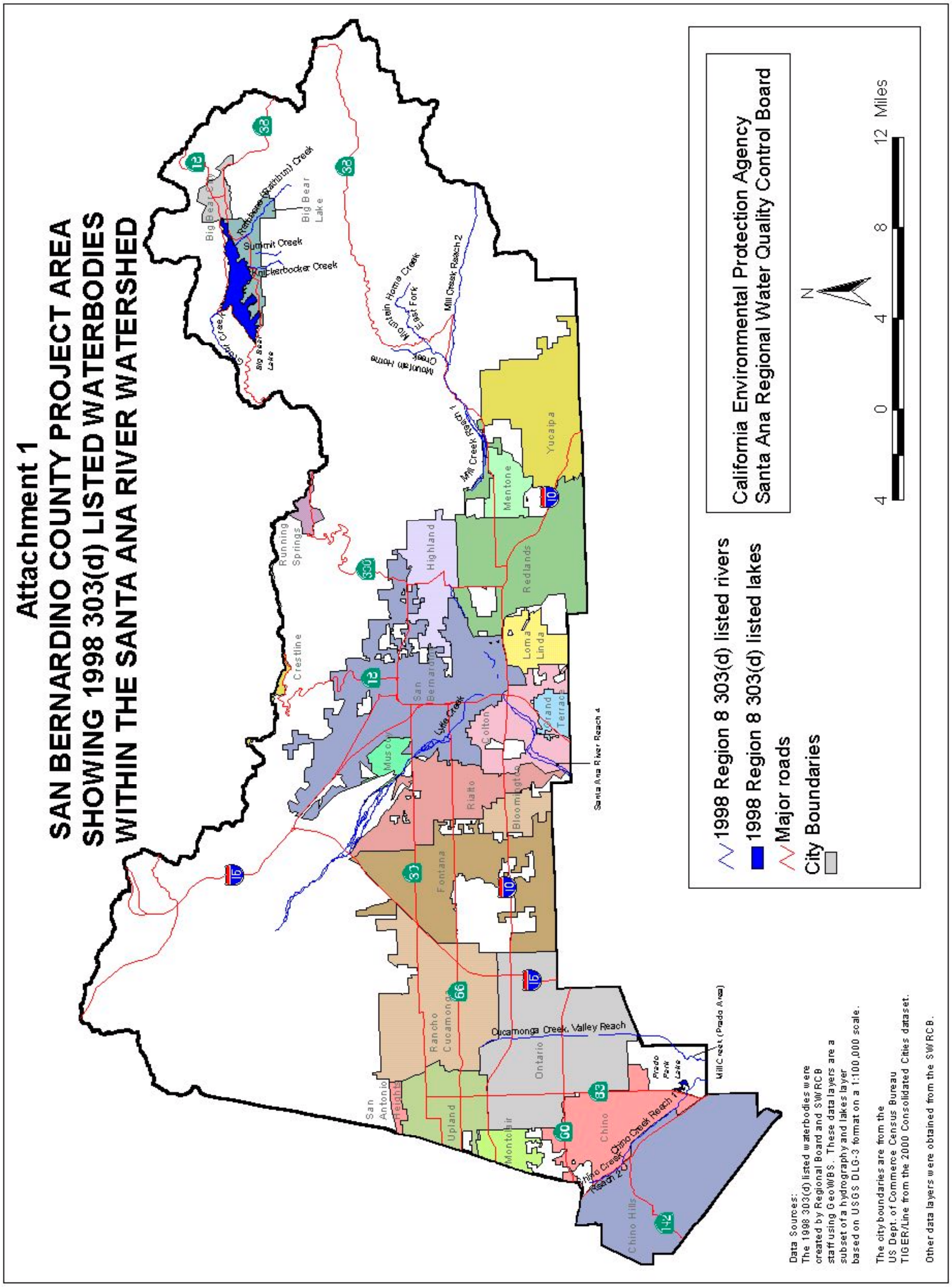
4. Order No. 96-32 is hereby rescinded.

I, Gerard Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on …….

_____

Gerard J. Thibeault

Executive Officer


Attachment 1
SAN BERNARDINO COUNTY PROJECT AREA
SHOWING 1998 303(d) LISTED WATERBODIES
WITHIN THE SANTA ANA RIVER WATERSHED
1998 Region 8 303(d) listed rivers
1998 Region 8 303(d) listed lakes
Major roads
City Boundaries
California Environmental Protection Agency
Santa Ana Regional Water Quality Control Board
N
4
0
4
8
12 Miles
Big Bear
Big Bear Lake
Summit Creek
Knickerbocker Creek
Mountain Home Creek
East Fork
Mill Creek Reach 2
Mill Creek Reach 1
Running Springs
Crestline
Highland
Mentone
Yucaipa
Redlands
Loma Linda
San Bernardino
Lytle Creek
Colton
Grand Terrace
Santa Ana River Reach 4
Muscoy
Rialto
Bloomington
Fontana
Rancho Cucamonga
Cucamonga Creek, Valley Reach
Mill Creek (Prado Area)
Prado Park Lake
Ontario
San Antonio Heights
Upland
Montclair
Chino
Chino Creek Reach 1
Chino Creek Reach 2
Chino Hills
Data Sources:
The 1998 303(d) listed waterbodies were created by Regional Board and SWRCB staff using GeoWBS. These data layers are a subset of a hydrography and lakes layer based on USGS DLG-3 format on a 1:100,000 scale.
The city boundaries are from the US Dept. of Commerce Census Bureau TIGER/Line from the 2000 Consolidated Cities dataset.
Other data layers were obtained from the SWRCB.

Attachment 2

Inland Surface Streams

A. Santa Ana River

Santa Ana River, Reaches 4, 5, and 6

B. San Bernardino Mountain Streams

Mill Creek Drainage

Mill Creek, Reaches 1 and 2

Mountain Home Creek

Mountain Home Creek, East Fork

Monkey Face Creek

Alger Creek

Falls Creek

Vivian Creek

High Creek

Other Tributaries: Lost, Oak Cove, Green, Skinner, Momyer and Glen Martin Creeks, and other Tributaries to these Creeks

Bear Creek Drainage

Bear Creek

Siberia Creek

Slide Creek

All Other Tributaries to these Creeks

Big Bear Lake Tributaries

North Creek

Metcalf Creek

Grout Creek

Rathbone (Rathbun) Creek

Other Tributaries to Big Bear Lake: Johnson, Minnelusa, Polique, and Red Ant Creeks, and other Tributaries to these Creeks

Baldwin Lake Drainage

Shay Creek

Other Tributaries to Baldwin Lake: Sawmill, Green, and Caribou Canyons and other Tributaries to these Creeks.

C. Other Streams Draining to Santa Ana River (Mountain Reaches)

Cajon Creek

City Creek

Devil Canyon Creek

East Twin and Strawberry Creeks

Waterman Canyon Creek

Fish Creek

Forsee Creek

Plunge Creek

Barton Creek

Bailey Canyon Creek

Kimbark Canyon, East Fork Kimbark Canyon, Ames Canyon and West Fork Cable Canyon Creeks

Valley Reaches of Above Streams

Other Tributaries (Mountain Reach): Alder, Badger Canyon, Bledsoe Gulch, Borea Canyon, Breakneck, Cable Canyon, Cienega Seca, Cold, Converse, Coon, Crystal, Deer, Elder, Fredalba, Frog, Government, Hamilton, Heart Bar, Hemlock, Keller, Kilpecker, Little Mill, Little Sand Canyon, Lost, Meyer Canyon, Mile, Monroe Canyon, Oak, Rattlesnake, Round Cienega, Sand, Schneider, Staircase, Warm Springs Canyon and Wild Horse Creeks, and other tributary to these Creeks.

D. San Gabriel Mountain Streams (Mountain Reaches)

San Antonio Creek

Lytle Creek (South, Middle, and North Forks) and Coldwater Canyon Creek

Day and East Etiwanda Creeks

Valley Reaches of Above Streams

Cucamonga Creek (Mountain Reach)

Cucamonga Creek (Valley Reach)

Other Tributaries (Mountain Reaches): San Sevaine, Deer, Duncan Canyon, Henderson Canyon, Stoddard Canyon, Icehouse Canyon, Cascade Canyon, Cedar, Falling Rock, Kerkhoff and Cherry Creeks, and other Tributaries to these Creeks.

E. San Timoteo Area Streams

San Timoteo Creek, Reaches 1 and 2

Oak Glen, Potato Canyon and Birch Creeks

Yucaipa Creek

F. Prado Area Streams

Chino Creek

G. Lake and Reservoirs

Baldwin Lake

Big Bear Lake

Jenks Lake

Attachment 3

LIST OF OTHER ENTITIES WITH THE POTENTIAL TO DISCHARGE POLLUTANTS TO THE SAN BERNARDINO COUNTY STORM WATER CONVEYANCE SYSTEM[7]

Government Agencies

U.S. Army Corps of Engineers

U.S. Department of Agriculture - Forest Services, San Bernardino County National Forest

California Department of Transportation (Cal Trans)

California Department of Parks and Recreation - Chino Hills State Park

Inland Valley Development Agency, San Bernardino International Trade Center and Airport

Hospitals

Bear Valley Community Hospital

Chino Community Hospital

Doctors Hospital

Kaiser Foundation Hospital

Loma Linda Community Hospital

Loma Linda University Medical Center

Mountains Community Hospital

Ontario Community Hospital

Patton State Hospital

U.S. Department of Veterans Affair - Jerry L. Pettis Memorial Veterans Medical Center

Redlands Community Hospital

St. Bernardino Medical Center

San Antonio Community Hospital

San Bernardino Community Hospital

San Bernardino County Hospital

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[7] If any entity on this list is determined to cause or contribute to violations of this Order, the RWQCB will require the entity to either:1) secure an NPDES permit; or 2) become a permittee under this permit if acceptable to the existing permittees and subject to execution of the implementation agreement. Please refer to Finding 24 on page 8 of this Order.

Railroads

AT&SF Railway Company

Southern Pacific Railroad Company

School Districts

Alta Loma Elementary School District

Bear Valley Unified School District

Central Elementary School District

Chaffey Joint Union High School District

Chino Valley Unified School District

Colton Joint Unified School District

Cucamonga Elementary School District

Etiwanda Elementary School District

Fontana Unified School District

Mountain View Elementary School District

Mt. Baldy joint Elementary School District

Ontario-Montclair Elementary School District

Rialto Unified School District

Rim of the World Unified School District

Redlands Unified School District

San Bernardino City Unified School District

Upland Unified School District

Yucaipa Joint Unified School District

Universities and Colleges

California State University - California State University San Bernardino

San Bernardino Community College District - Chaffey College Campus

San Bernardino Community College District - Crafton Hills College Campus

San Bernardino Community College District - San Bernardino Valley College Campus

University of Redlands

Loma Linda University

Water Districts

- Big Bear Municipal Water District
- Inland Empire Utilities Agency
- Cucamonga County Water District
- East Valley Water District
- Monte Vista Water District
- San Bernardino Valley Municipal Water District
- West San Bernardino County Water District
- Yucaipa Valley Water District

Transportation

- Omnitrans
- Metrolink (Fontana, Montclair, Ontario, Rancho Cucamonga, Rialto, San Bernardino)
- Redlands Municipal Airport
- Rialto Municipal Airport
- Chino Airport
- Cable Airport

Other Potential Dischargers

- United States Postal Service
- California National Guard

ATTACHMENT 4

GLOSSARY

Beneficial Uses – The uses of water necessary for the survival or well being of man, plants, and wildlife. These uses of water serve to promote the tangible and intangible economic, social, and environmental goals. "Beneficial Uses" that may be protected against include, but are not limited to: domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves. Existing beneficial uses are uses that were attained in the surface or ground water on or after November 28, 1975; and potential beneficial uses are uses that would probably develop in future years through the implementation of various control measures. "Beneficial Uses" are equivalent to "Designated Uses" under federal law. [California Water Code Section 13050(f)].

Best Available Technology (BAT) – BAT is the acronym for best available technology economically achievable. BAT is the technology-based standard established by congress in CWA section 402(p)(3)(A) for industrial dischargers of storm water. Technology-based standards establish the level of pollutant reductions that dischargers must achieve, typically by treatment or by a combination of treatment and best management practices, or BMPs. For example, secondary treatment (or the removal of 85% suspended solids and BOD) is the BAT for suspended solid and BOD removal from a sewage treatment plant. BAT generally emphasizes treatment methods first and pollution prevention and source control BMPs secondarily.

The best economically achievable technology that will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants is determined in accordance with regulations issued by the Environmental Protection Agency Administrator. Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the permitting authority deems appropriate.

Best Conventional Technology (BCT) – BCT is an acronym for Best Conventional Technology. BCT is the treatment techniques, processes and procedure innovations, and operating methods that eliminate or reduce chemical, physical, and biological pollutant constituents.

Best Management Practices – Best Management Practices (BMPs) are defined in 40 CFR 122.2 as schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. In the case of municipal storm water

permits, BMPs are typically used in place of numeric effluent limits.

Bioaccumulate – The progressive accumulation of contaminants in the tissues of organisms through any route including respiration, ingestion, or direct contact with contaminated water, sediment, pore water, or dredged material to a higher concentration than in the surrounding environment. Bioaccumulation occurs with exposure and is independent of the tropic level.

Biological Integrity – Defined in Karr J.R. and D.R. Dudley. 1981. Ecological perspective on water quality goals. Environmental Management 5:55-68 as: "A balanced, integrated, adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of natural habitat of the region." Also referred to as ecosystem health.

Clean Water Act Section 402(p) – [33 USC 1342(p)] is the federal statute requiring municipal and industrial dischargers to obtain NPDES permits for their discharges of storm water.

Clean Water Act Section 303(d) Listed Water Body – is an impaired water body in which water quality does not meet applicable water quality standards and/or is not expected to meet water quality standards, even after the application of technology-based pollution controls required by the CWA. The discharge of urban runoff to these water bodies by the Co-permittees is significant because these discharges can cause or contribute to violations of applicable water quality standards.

Contamination – As defined in the Porter-Cologne Water Quality Control Act, contamination is "an impairment of the quality of waters of the State by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease." 'Contamination' includes any equivalent effect resulting from the disposal of waste whether or not waters of the U.S. are affected.

Debris – Debris is defined as the remains of anything destroyed or broken, or accumulated loose fragments of rock.

Effluent Limitations – Limitations on the volume of each waste discharge, and the quantity and concentrations of pollutants in the discharge. The limitations are designed to ensure that the discharge does not cause water quality objectives to be exceeded in the receiving water and does not adversely affect beneficial uses.

Effluent limitations are limitations of the quantity and concentrations of pollutants in a discharge. The limitations are designed to ensure that the discharge does not cause water quality objectives to be exceeded in the receiving water and does not adversely affect beneficial uses. In other words, an effluent limit is the maximum concentration of a pollutant that a discharge can contain. To meet effluent limitations, the effluent typically must undergo one or more forms of treatment to remove pollutants in order to lower the pollutant concentration below the limit. Effluent limits are typically numeric (e.g., 10 mg/l).

Erosion – When land is diminished or wane away due to the effects of wind, water, or glacial ice. Often the eroded debris (silt or sediment) becomes a pollutant via storm water runoff. Erosion occurs naturally but can be intensified by land clearing activities such as farming, development, road building, and timber harvesting.

Grading – The cutting and/or filling of the land surface to a desired slope or elevation.

Hazardous Material – Any substance that poses a threat to human health or the environment due to its toxicity, corrosiveness, ignitability, explosive nature or chemical reactivity. These also include materials named by the U.S. EPA to be reported if a designated quantity of the material is spilled into the waters of the United States or emitted into the environment.

Illicit Discharge – Any discharge to a municipal separate storm sewer that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes all non-storm water discharges except discharges pursuant to an NPDES permit, discharges that are identified in Section III, Discharge Limitations/Prohibitions, of this Order, and discharges authorized by the Regional Board Executive Officer. .

MEP – MEP is the acronym for Maximum Extent Practicable. Maximum Extent Practicable means the standard for implementation of storm water management programs to reduce pollutants in storm water. CWA section 402(p)(3)(B)(iii) requires that municipal permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Adminstrator or the State determines appropriate for the control of such pollutants. Specifically, municipalities must choose effective BMPs, and reject applicable BMPs only where other effective BMPs will serve the same purpose.

Municipal Storm Water Conveyance System – (See Municipal Separate Storm Sewer System or MS4).

Municipal Separate Storm Sewer System (MS4) – MS4 is an acronym for Municipal Separate Storm Sewer System. A Municipal Separate Storm Sewer System is a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, natural drainage features or channels, modified natural channels, man-made channels, or storm drains): (i) Owned or operated by a State, city town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) Designated or used for collecting of conveying storm water; (iii) Which is not a combined sewer; (iv) Which is not part of the Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

Historic and current development make use of natural drainage patterns and features as conveyances for urban runoff. Urban streams used in this manner are part of the municipalities MS4 regardless of whether they are natural, man-made, or partially modified features. In these cases, the urban stream is both an MS4 and a receiving water.

National Pollution Discharge Elimination System (NPDES) – Permits issued under Section 402(p) of the Federal Clean Water Act for regulating discharge of pollutants to waters of the United States.

Non-Point Source Pollution (NPS) – Non point source refers to diffuse, widespread sources of pollution. These sources may be large or small, but are generally numerous throughout a watershed. Non Point Sources include but are not limited to urban, agricultural, or industrial areas, roads, highways, construction sites, communities served by septic systems, recreational boating activities, timber harvesting, mining, livestock grazing, as well as physical changes to stream channels, and habitat degradation. NPS pollution can occur year round any time rainfall, snowmelt, irrigation, or any other source of water runs over land or through the ground, picks up pollutants from these numerous, diffuse sources and deposits them into rivers, lakes, and coastal waters or introduces them into ground water.

Non-Storm Water – Non-storm water consists of all discharges to and from a storm water conveyance system that do not originate from precipitation events (i.e., all discharges from a conveyance system other than storm water). Non-storm water includes illicit discharges, non-prohibited discharges, and NPDES permitted discharges. An illicit discharge is defined at 40 CFR 122.26(b)(2) as any discharge to a municipal storm water conveyance system that is not composed entirely of storm water except discharges pursuant to a separate NPDES permit and discharges resulting from emergency fire fighting activities.

Nuisance – As defined in the Porter-Cologne Water Quality Control Act a nuisance is "anything which meets all of the following requirements: 1) Is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. 2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. 3) Occurs during, or as a result of, the treatment or disposal of wastes."

Numeric Effluent Limitations – The typical method by which effluent limits are prescribed for pollutants in waste discharge requirements implementing the federal NPDES regulations. When numeric effluent limits are met at the "end-of-pipe," the effluent discharge generally will not cause water quality standards to be exceeded in the receiving waters (i.e., water quality standards will also be met).

Person – A person is defined as an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof. [40 CFR 122.2].

Point Source – Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operations, landfill leachate collection systems, vessel, or other floating craft from which pollutants are or may be discharged.

Pollution – As defined in the Porter-Cologne Water Quality Control Act, pollution is "the alteration of the quality of the waters of the U.S. by waste, to a degree that unreasonably affects either of the following: A) The waters for beneficial uses; or 2) Facilities that serve these beneficial uses." Pollution may include contamination.

Pollutant – A pollutant is broadly defined as any agent that may cause or contribute to the degradation of water quality such that a condition of pollution or contamination is created or aggravated.

Pollution Prevention – Pollution prevention is defined as practices and processes that reduce or eliminate the generation of pollutants, in contrast to source control, treatment, or disposal.

Post-Construction BMPs – A subset of BMPs including structural and non-structural controls which detain, retain, filter, or educate to prevent the release of pollutants to surface waters during the final functional life of development.

Receiving Water Limitations – Waste discharge requirements issued by the SARWQCB typically include both: (1) "Effluent Limitations" (or "Discharge Limitations") that specify the technology-based or water-quality-based effluent limitations; and (2) "Receiving Water Limitations" that specify the water quality objectives in the Basin Plan as well as any other limitations necessary to attain those objectives. In summary, the "Receiving Water Limitations" provision is the provision used to implement the requirement of CWA section 301(b)(1)(C) that NPDES permits must include any more stringent limitations necessary to meet water quality standards.

Sediment – Soil, sand, and minerals washed from land into water. Sediment resulting from anthropogenic sources (i.e. human induced land disturbance activities) is considered a pollutant. This Order regulates only the discharges of sediment from anthropogenic sources and does not regulate naturally occurring sources of sediment. Sediment can destroy fish-nesting areas, clog animal habitats, and cloud waters so that sunlight does not reach aquatic plants.

Storm Water – "Storm water" is as defined urban runoff and snowmelt runoff consisting only of those discharges which originate from precipitation events. Storm water is that portion of precipitation that flows across a surface to the storm drain system or receiving waters. Examples of this phenomenon include: the water that flows off a building's roof when it rains (runoff from an impervious surface); the water that flows into streams when snow on the ground begins to melt (runoff from a semi-pervious surface); and the water that flows from a vegetated surface when rainfall is in excess of the rate at which it can infiltrate into the underlying soil (runoff from a pervious surface). When all factors are equal, runoff increases as the perviousness of a surface decreases. During precipitation events in urban areas, rain water picks up and transports pollutants

through storm water conveyance systems, and ultimately to waters of the United States.

Toxicity – Adverse responses of organisms to chemicals or physical agents ranging from mortality to physiological responses such as impaired reproduction or growth anomalies.

Total Maximum Daily Load (TMDL) – The TMDL is the maximum amount of a pollutant that can be discharged into a water body from all sources (point and non-point) and still maintain water quality standards. Under Clean Water Act Section 303(d), TMDLs must be developed for all water bodies that do not meet water quality standards after application of technology-based controls.

Urban Runoff – Urban runoff is defined as all flows in a storm water conveyance system and consists of the following components: (1) storm water (wet weather flows) and (2) non-storm water illicit discharges (dry weather flows).

Waste – As defined in California Water Code Section 13050(d), "waste includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal."

Article 2 of CCR Title 23, Chapter 15 (Chapter 15) contains a waste classification system which applies to solid and semi-solid waste which cannot be discharged directly or indirectly to water of the state and which therefore must be discharged to land for treatment, storage, or disposal in accordance with Chapter 15. There are four classifications of waste (listed in order of highest to lowest threat to water quality): hazardous waste, designated waste, nonhazardous solid waste, and inert waste.

Water Quality Objective – Numerical or narrative limits on constituents or characteristics of water designated to protect designated beneficial uses of the water. [California Water Code Section 13050 (h)] California's water quality objectives are established by the State/Regional Water Boards in the Water Quality Control Plans.

As stated in the Porter-Cologne Requirements for discharge (CWC 13263): "(Waste discharge) requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241."

Numeric or narrative limits for pollutants or characteristics of water designed to protect the beneficial uses of the water. In other words, a water quality objective is the maximum concentration of a pollutant that can exist in a receiving water and still generally ensure that the beneficial uses of the receiving water remain protected (i.e., not impaired). Since water quality objectives are designed specifically to protect the beneficial uses, when the objectives are violated the beneficial uses are, by definition, no longer protected and become impaired. This is a fundamental concept under the Porter Cologne Act. Equally fundamental is Porter Cologne's definition of pollution. A condition of pollution exists when the water quality needed to support designated

beneficial uses has become unreasonably affected or impaired; in other words, when the water quality objectives have been violated. These underlying definitions (regarding beneficial use protection) are the reason why all waste discharge requirements implementing the federal NPDES regulations require compliance with water quality objectives. (Water quality objectives are also called water quality criteria in the Clean Water Act.)

Water Quality Standards – are defined as the beneficial uses (e.g., swimming, fishing, municipal drinking water supply, etc.,) of water and the water quality objectives necessary to protect those uses.

Waters of the United States – Waters of the United States can be broadly defined as navigable surface waters and all tributary surface waters to navigable surface waters. Groundwater is not considered to be a Waters of the United States.

As defined in 40 CFR 122.2, the Waters of the U.S. are defined as: (a) All waters, which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (b) All interstate waters, including interstate "wetlands;" (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes; (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (3) Which are used or could be used for industrial purposes by industries in interstate commerce; (d) All impoundments of waters otherwise defined as waters of the United States under this definition; (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition; (f) The territorial seas; and (g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with the EPA.

Watershed – That geographical area which drains to a specified point on a water course, usually a confluence of streams or rivers (also known as drainage area, catchment, or river basin).

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SANTA ANA REGION

MONITORING AND REPORTING PROGRAM NO. R8-2002-0012

NPDES NO. CAS618036

FOR

THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, THE COUNTY OF SAN BERNARDINO, AND THE INCORPORATED CITIES OF SAN BERNARDINO COUNTY WITHIN THE SANTA ANA REGION

AREA-WIDE URBAN STORM WATER RUNOFF

I. GENERAL

1. Revisions of the monitoring and reporting program may be necessary to ensure that the discharger is in compliance with requirements and provisions contained in this Order. Revisions may be made by the Executive Officer at any time during the term of this Order, and may include a reduction or increase in the number of parameters to be monitored, the frequency of monitoring, number of sampling locations, or the number of samples collected.
2. All sample collection, handling, storage, and analyses shall be in accordance with 40 CFR Part 136.
3. The permittees are authorized to complement monitoring data from other sources provided those sources are identical to sources in the Santa Ana Watershed.
4. The Executive Officer is authorized to allow the permittees to participate in statewide, national, or other monitoring programs in lieu of this monitoring program.
5. The permittees shall develop and submit a consolidated monitoring program for approval by the Executive Officer of the Regional Board. The consolidated program for water quality monitoring should be capable of attaining the objectives mentioned below.

II. OBJECTIVES

The overall goal of this monitoring program is to develop and support an effective watershed management program. The following are the major objectives of this monitoring program:

1. To define water quality status, trends, and pollutants of concern associated with urban storm water discharges and their impact on the beneficial uses of the receiving waters.
2. To identify the sources of pollutants in storm water runoff to the maximum extent possible.
3. To characterize pollutants and to assess the influence of land use on water quality.
4. To identify significant water quality problems related to storm water discharges within the watershed.

5. To evaluate the effectiveness of existing management programs, including an estimate of pollutant reductions achieved by the structural and nonstructural BMPs.

6. To identify other sources of pollutants in storm water runoff to the extent possible (e.g., atmospheric deposition, contaminated sediments, other non-point sources, etc.).

7. To conduct monitoring in cooperation with Riverside County for investigation of bacteriological impairments in the upper Santa Ana River.

8. To verify and to control illegal discharges.

9. To identify those waters which without additional action to control pollution from storm water discharges cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of the Basin Plan.

10. To evaluate costs and benefits to the stakeholder including the public.

The Principal Permittee has been monitoring storm water and receiving waters since the first permit term. It is recognized that some of these objectives may not have been attainable during the previous permit terms. It is hoped that continuous monitoring for long term shall help to accomplish these objectives. The Regional Board authorizes the Executive Officer to evaluate and determine adequate progress toward meeting each objective.

This Order references three components of the monitoring program: (1) The existing monitoring program shall continue to be implemented until the integrated watershed monitoring program is approved; (2) An integrated watershed monitoring program is to be developed under this Order to identify data gaps and to attain the above-mentioned objectives; and (3) Other regional monitoring efforts where the permittees participate or make monetary contributions.

III. MONITORING PROGRAM REQUIREMENTS

1. By July 1, 2003, the permittees shall complete the GIS-based mapping of drainage area information, including drainage system facilities, land uses, and receiving waters.

2. By December 1, 2003, the permittees shall complete an assessment of the relative pollutant loading from different drainage areas to the receiving waters. This information shall be reported in the annual reports starting in 2004.

3. By December 1, 2003, the permittees shall evaluate the effectiveness of selected BMPs in controlling pollutant loads in urban storm water runoff. The results shall be included in the annual reports starting from 2004.

4. By July 1, 2002, the principal permittee, in collaboration with the co-permittees,

shall develop and submit for approval of the Executive Officer a bacteriological monitoring program to determine the sources of bacteriological contamination in the Santa Ana River. This program shall include wet and dry weather monitoring in the River and its major tributaries within the permittees' jurisdiction.

5. By July 1, 2003, the permittees shall revise and submit for approval of the Executive Officer an integrated watershed monitoring program geared towards achieving the above stated objectives and additional objectives that the Executive Officer may deem appropriate. In developing this program, the principal permittee is encouraged to seek cooperation with the permittees from the Riverside and Orange Counties. The Executive Officer or his/her designated representative(s) shall facilitate the coordination meetings or subcommittees formed to achieve this goal. The development and implementation of the monitoring program shall be in accordance with the time schedules prescribed by the Executive Officer. At a minimum, the program shall include the following:

   a. Uniform guidelines for quality control, quality assurance, data collection and data analyses.

   b. A mechanism for the collection, analyses and interpretation of existing data from San Bernardino County monitoring programs and other similar programs. These and other data from local, regional or national sources should be utilized to characterize different storm water sources; to determine pollutant generation, transport and fate; to develop a relationship between land use, development size, storm size and the event mean concentration of pollutants; to determine spatial and temporal variances in storm water quality and seasonal and other bias in the collected data; and to identify any unique features of the Santa Ana Watershed. The permittees are encouraged to use data from similar studies, if available.

   c. A description of the monitoring program including:

      1) The number of monitoring stations;

      2) Environmental indicators (e. g., ecosystem, biological, habitat, chemical, sediment, stream health, etc.) chosen for monitoring;

      3) Parameters selected for field screening and for laboratory work; and

      4) Total number of samples to be collected from each station, receiving water and major outfall monitoring, frequency of sampling during wet and dry weather, short duration or long duration storm events, type of samples (grab, 24-hour composite, etc.), and the type of sampling equipment.

   d. A mechanism for analyzing the collected data and interpreting the results including:

      1) An evaluation of the effectiveness of the best management practices,

and need for any refinement of the management practices;

2) An evaluation of water quality status, trends, and pollutants of concern associated with urban storm water discharges and their impact on the beneficial uses of the receiving waters;

3) Characterization and identification of sources of pollutants in storm water runoff and an assessment of the influence of land use on water quality;

4) Identification of significant water quality problems related to storm water discharges within the watershed;

5) Evaluation of the effectiveness of existing management programs, including an estimate of pollutant reductions achieved by the structural and nonstructural BMPs;

6) Evaluation of sources of bacteriological contamination in the upper Santa Ana River in coordination with Riverside County;

7) Identification of those waters which without additional action to control pollution from storm water discharges cannot reasonably be expected to attain or maintain applicable water quality standards specified in the Basin Plan; and

8) Analysis and interpretation of the collected data to determine the impact of storm water runoff and/or validate any water quality models.

6. Pending approval of the integrated watershed monitoring program, the permittees shall continue existing wet weather monitoring at storm drain monitoring Sites 2, 3, and 5, as identified in the approved monitoring program amended on January 24, 2001. The permitees shall focus on source identification and source control efforts based on the results of these and other monitoring efforts.

IV. REPORTING

1. All progress reports and proposed strategies and plans required by this Order shall be signed by the principal permittee and copies shall be submitted to the Executive Officer of the Regional Board under penalty of perjury.

2. The permittees shall submit an ANNUAL PROGRESS REPORT to the Executive Officer of the Regional Board and to the Regional Administrator of U.S. EPA, Region 9, no later than November 15 of each year. This progress report may be submitted in a mutually agreed upon electronic format. At a minimum, the annual progress report shall include the following:

   a. A review of the status of program implementation and compliance (or non-compliance) with the schedules contained in this Order.

   b. An assessment of the effectiveness of control measures established under the illicit discharge elimination program and the ROWD. The effectiveness

may be measured in terms of how successful the program has been in eliminating illicit/illegal discharges and in reducing pollutant loads in storm water discharges.

c. An assessment of any storm water management program modifications made to comply with Clean Water Act requirements to reduce the discharge of pollutants to the maximum extent practicable.

d. An analysis and discussion of the monitoring results and any impacts on the receiving waters. Also, recommendations for corrective actions during the upcoming year of management program implementation and monitoring.

e. An analysis of the effectiveness of the overall storm water management program and identification of proposed programs which will result in the attainment of the water quality standards, and a time schedule to implement the new programs.

f. An assessment of the public education program (including industrial facilities and construction sites) and educational activities proposed for the upcoming year.

g. A progress report on the prosecution of illegal dischargers and reduction or elimination of illegal discharges.

h. An assessment of the permittees' compliance status with the Receiving Water Limitations, Section IV of the Order, including any proposed modifications to the ROWD and MSWMP if the Receiving Water Limitations are not fully achieved.

3. Permittees shall be responsible for the submittal of all required information and materials needed to comply with this Order in a timely manner to the principal permittee. All such submittals shall be signed by a duly authorized representative of the permittee under penalty of perjury.

V. REPORTING SCHEDULE

All reports required by this Order shall be submitted to the Executive Officer of the Regional Board in accordance with the following schedule:

Reporting Schedule (Order R8-2002-0012)		
ITEM	**COMPLETION DATE/FREQ.**	**REPORT DUE DATE**
II. Evaluate ordinances to determine authority to impose administrative fines for storm water violations	March 1, 2003	Nov. 15, 2003
IV. RECEIVING WATER LIMITATIONS: Pollutant source investigation and control plan to prevent or reduce pollutants from MS4 systems causing or contributing to exceedance of water quality standards	As needed	Nov. 15
V. IMPLEMENTATION AGREEMENT: Evaluate storm water management structure and implementation agreement	Annually	July 1
VI. LEGAL AUTHORITY/ ENFORCEMENT: Review water quality ordinances and provide a report on the effectiveness of these ordinances and their enforcement, in prohibiting different types of discharges	One Time	Nov. 15, 2003
The principal permittee or subcommittee shall develop a restaurant inspection program	March 1, 2003	March 1, 2003
Submit a statement signed by legal counsel that permittee has obtained all necessary authority to comply with this Order through adoption of ordinances and/or municipal code modifications	One Time	March 1, 2004
VII. ILLEGAL/ILLICIT CONNECTIONS; LITTER, DEBRIS AND TRASH CONTROL: Spills , leaks, and/or illegal dumping (with immediate threat to human health or environment) shall be promptly investigated and reported	Ongoing	Within 24 hours by phone or e-mail, written within 10 days
All sewage spills above 1,000 gallons and all reportable quantities of hazardous substance and hazardous waste spills	Ongoing	Within 24 hours
All other spill incidents	Annually	Nov. 15

Update Illicit connection database on an ongoing basis and report annually	Nov. 15, 2002, annually thereafter	Nov. 15
Identify control measures implemented to reduce and/or eliminate the discharge of trash and debris	Annually	Nov. 15
Review litter/trash control ordinances to determine need for revision	July 1, 2003	Nov.15, 2003
Determine need for additional debris control measures	July 1, 2003	Nov.15, 2003
VIII. MUNICIPAL INSPECTIONS OF CONSTRUCTION SITES: Develop an inventory of all construction sites	January 31, 2003 & updated by Sept. 30 annually thereafter	Nov. 15
IX. MUNICIPAL INSPECTIONS OF INDUSTRIAL FACILITIES: Develop an inventory of industrial facilities with business permits or other authorization that have potential of discharging pollutants to the MS4, provide copy of inspection database	July 1, 2003 & updated annually	Nov. 15
Identify the remaining industrial facilities that do not have business permits or other authorization	September 1, 2005 & updated annually	Nov. 15
X. MUNICIPAL INSPECTIONS OF COMMERCIAL FACILITIES: Develop an inventory of listed commercial facilities that have potential of discharging pollutants to the MS4, provide copy of inspection database	July 1, 2003 & updated annually	Nov. 15
XI. SEWAGE SPILLS, INFILTRATION INTO MS4 SYSTEMS FROM LEAKING SANITARY SEWER LINES, ANS SEPTIC SYSTEM FAILURES:		
Propose a mechanism to determine the effect of septic system failure on storm water quality	One Time	July 1, 2003
Propose a unified response mechanism to respond to any sewage spills	One Time	July 1, 2003
Review current oversight programs for portable toilets to determine the need for any revision	One Time	July 1, 2003
XII.A. NEW DEVELOPMENT (INCLUDING SIGNIFICANT RE-DEVELOPMENT): Establish a	One Time	October 15, 2002

mechanism to ensure all construction projects and industrial sites filed NOI for coverage under the General Permit prior to issuance of local permits or approvals		
Review and modify approval/permitting process to incorporate BMPs in the Guidelines for New Development and Redevelopment	One Time	September 1, 2002
Review planning procedure and CEQA document preparation process to ensure storm water-related issues are properly considered and addressed	One Time	February 15, 2003
Review and/or incorporate watershed protection principles and policies into the General Plan	July 1, 2004	Nov. 15, 2004
Review current grading/erosion control ordinances	One Time	September 1, 2003
Identify a new development site and propose study to evaluate the effectiveness of a selected BMP	One Time	Nov. 15, 2003
Review Guidelines for New Development and Redevelopment to determine the need for any revisions	One Time	July 1, 2003
XII.B. WATER QUALITY MANAGEMENT PLAN (WQMP) FOR RUNOFF (FOR NEW DEVELOPMENT/SIGNIFICANT RE-DEVELOMENT): Review existing BMPs for new development and submit revised WQMP for urban runoff from new developments/significant redevelopments	One Time	July 1, 2003
XIII. PUBLIC EDUCATION AND OUTREACH: Public awareness survey to determine effectiveness of current public and business education strategy	One Time	October 30, 2002
Propose a study for measuring changes in the public's knowledge and behavior as a result of the education program	One Time	January 15, 2003
Recommend any changes to the public and business education program	One Time	January 15, 2003
Develop public education material to encourage the public to report illegal dumping from residential, industrial, construction, and commercial sites into public streets, storm drains and other waterbodies	One Time	Sept. 15, 2002

Develop BMP guidance for household use of fertilizer, pesticides, herbicides, and other chemicals, guidance for mobile vehicle maintenance, carpet cleaners, commercial landscape maintenance, and pavement cutting	One Time	July 1, 2003
Determine best method of establishing a mechanism(s) for providing educational and General Industrial Permit materials to businesses within jurisdiction	One Time	January 15, 2003
XIV. MUNICIPAL FACILITIES/ACTIVITIES: Complete assessment of flood control facilities to evaluate opportunities to configure and/or reconfigure channel segments to function as pollution control devices and optimize beneficial uses	September 1, 2002	Nov. 15, 2003
Develop list of BMPs for fire-fighting training, non-emegency firefighting activities, etc.	One Time	July 1, 2003
Develop and distribute to all permittees a BMP fact sheet to address public agency activities	October 1, 2002	Nov. 15, 2002
Develop and distribute BMP guidance for public agency, contract field operations and maintenance staff to provide guidance in appropriate pollution control measures, how to respond to spills, etc.	September 1, 2002	Nov. 15, 2002
Evaluation of efficiency and cost effectiveness of the available BMPs for litter control and develop recommendations for any needed improvements	July 1, 2003	Nov. 15, 2003
Identify areas not subject to street sweeping due to lack of continuous curb and gutter and evaluate their potential for impacting storm water quality	One Time	Nov. 15, 2003
Inspect and maintain at least 80% of drainage facilities on an annual basis, with 100% of facilities in a two-year period. Evaluate if inspection and maintenance schedule need to be increased.	Annually	Nov. 15
XVI. PROGRAM MANAGEMENT: Evaluate the management plan to determine need for revisions	By October 1, Annually	Nov. 15
XVII. FISCAL RESOURCES: Prepare and submit a unified fiscal analysis to the EO	Annually	Nov. 15
XIX. PERMIT EXPIRATION AND RENEWAL: **Submit** Report of Waste Discharge	180 days prior to expiration	October 28, 2006

MONITORING PROGRAM REQUIREMENTS: GIS-based mapping of drainage area information	One Time	July 1, 2003
Assessment of relative pollutant loading from different drainage areas to receiving waters	Dec. 1, 2003, One Time	Nov. 15, 2004
Evaluate effectiveness of selected BMPs in controlling pollutant loads	Dec. 1, 2003, Annually thereafter	Nov. 15, 2004
Submit bacteriological monitoring program	One Time	July 1, 2002
Submit integrated watershed monitoring program	One Time	July 1, 2003
REPORTING: Annual progress report	Annually	Nov. 15

Ordered by_____

Gerard J. Thibeault

Executive Officer

Date……..

TENTATIVE ORDER ORDER R8-2002-0012
(Formerly Order 01-16, NPDES CAS618036)
SAN BERNARDINO COUNTY
MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT

Comment letters were received from the following:

I. First Draft – September 14, 2001
- **A. City of Ontario (September 19, 2001) – Comments 1 - 33**
- **B. City of Rancho Cucamonga (October 2, 2001) – Comments 34 - 71**
- **C. City of Fontana (September 24, 2001) – Comments 72 - 78**

II. Third Draft – January 9, 2002
- **A. City of Ontario (January 31, 2002) – Comments 79 - 88**
- **B. Burke, et al. for the City of Chino Hills (January 23, 2002) – Comments – 89 - 98**
- **C. Burke, et al. For the City of Chino Hills (January 17, 2002) – Comment 99**
- **D. Construction Industry Coalition on Water Quality (February 8, 2002) - Comments 100 - 114**
- **E. Manatt/Phelps/Philllips (February 7, 2002) – Comments 115 - 120**
- **F. Natural Resource Defense Council (NRDC) (February 8, 2002) – Comments 121 - 146**

III. Fourth Draft - February 13, 2002
- **A. NRDC (February 25, 2002) – Comments 147 - 155**
- **B. City of Ontario (March 12, 2002) – Comments 156-161**
- **C. Richards, et al for the Cities of Rancho Cucamonga and Upland (March 15, 2002) – Comments 162-163**
- **D. Rancho Cucamonga and Upland (March 15, 2002) Comments 164-182**
- **E. San Bernardino County Flood Control District (March 20, 2002) Comments 183-231**

I. RESPONSE TO COMMENTS ON THE FIRST DRAFT (SEPTEMBER 14, 2001)

(Most of the comments are verbatim from the comment letters)

A. RESPONSE TO CITY OF ONTARIO COMMENTS (SEPTEMBER 19, 2001):

1. **Comment:** A definition section is needed in the permit.

   Response: A definition section has been added as Appendix 4. Some of the definitions are included as footnotes.

2. **Comment:** Page 6, Item No. 17: Reach 3 of the Santa Ana River is not listed here, but is on the 303(d) list. A map showing the location and extent of each waterbody and the specific jurisdictions draining into these waterbodies must be included in the permit. The City also recommends attaching the TMDL schedule for the waterbodies impacted by the permit.

   Response: Reach 3 of the Santa Ana River starts from Mission Boulevard and ends at Prado Dam in Riverside County. Since this is outside the permitted area, it has been deleted from the 303(d) list for the San Bernardino County area. The requested map has been included as Attachment 1. The TMDL schedule and a list of jurisdictions draining into specific waterbodies have been included in the Fact Sheet (page 10).

3. **Comment:** Page 7, Item No. 21: It is not clear what the listed items are.

   Response: The items are now listed under Item No. 22 with an explanation.

4. **Comment:** Page 8, Item No. 23: Attachment 3 is a list of organizations that are not actively involved in the storm water program. The purpose of the reference to this attachment should be made clear.

   Response: Attachment 3 is a list of organizations that are not currently regulated under the areawide permit but whose activities may have an impact on discharges to the MS4 systems. The Regional Board expects the permittees and the listed entities to work together to control pollutants in storm water runoff. Some clarifications have been added to the text. Also see response to comment No. 34 from the City of Rancho Cucamonga.

5. **Comment:** Page 8, Item No. 24: The first reference to MSWMP needs to be defined. This paragraph is very confusing. The City recommends stating that the MSWMP is the ROWD and that the order requires that the permittees comply with the ROWD.

Response: The first reference to the MSWMP is actually at Item No. 21 (Item 22 in the March 22, 2002 draft) of the permit. Please note that the MSWMP is only a part of the ROWD. The language has been revised for clarification.

6. **Comment:** Page 12, Item No. 43: Reach 3 of the Santa Ana River is also impaired for pathogens. Change the sentence to, "These elevated levels may in part be attributed to discharges into MS4 systems." Elevated levels of pathogens come from specific sources such as sewers, dairies or animal waste, not from storm drains.

   Response: Reach 3 of the Santa Ana River is not part of the San Bernardino County MS4 permit. There could be several sources for the elevated pathogen levels. The Executive Officer issued a Water Code Section 13267 letter to the MS4 permittess discharging to the impaired portions of the Santa Ana River to investigate the sources of bacterial contamination in the River, including the contribution from urban runoff. This investigation is not complete and it is premature to draw any conclusions prior to completion of this investigation.

7. **Comment:** Page 13, Item No. 45: It is not clear why only "Non-Residential" construction projects are included here. Does this mean residential construction projects (1-5 acres) do not need to be regulated? Under WQMP requirements, Page 24, developments, which involve home subdivisions of 10 or more, are required to implement BMPS.

   Response: This is now Item 48 in the March 22, 2002 draft. The language has been revised. BMPs are needed for all construction projects.

8. **Comment:** Page 16, Section III, Item No. 2: Replace wording with, "The permittees shall prohibit storm water or non-storm water discharges into their storm water conveyance systems which could cause or contribute to a condition of contamination, nuisance or pollution in waters of the State as defined in Section 13050 of the Water Code". The City cannot completely control all discharges into or from its storm drain system and should, therefore, not be held responsible for all of the discharges into or from its storm drain system. The City should be required to develop programs and controls to prevent illegal discharges or spills which could cause contamination, nuisance or pollution, but cannot prevent these conditions in receiving waters unless a treatment plant is installed.

   Response: Please see the revised language. The revised language is consistent with State Board Orders No. 99-05 and 2001-15.

9. **Comment:** Page 16, Section III, Item No. 3: Replace wording with "The permittees shall implement programs to reduce pollutants to the maximum extent practicable and

require the implementation of programs by users of the storm drain system to reduce pollutants in storm water to the maximum extent practicable".

Response: This is now Item No. 3i in the March 22, 2002 draft. Please note that the language in the draft permit is consistent with State Board Order No. 99-05. (Also see response to Comment 8, above.)

10. **Comment:** Page 17, Section III, Item No. 4j: Define non-commercial vehicle washing. Does that mean car wash fundraisers are exempt? Recommend adding the following as an authorized non-storm water discharge: "r) Rinse waters using a garden hose to rinse the dust off of surfaces, provided that no detergents or other chemicals are used and provided that chemical spills, litter, sediment and debris are removed from these surfaces and disposed of properly, prior to rinsing."

Response: Non-commercial vehicle washing includes residential car washing and car washing operations conducted by non-profit organizations for fundraisers. Please note that this list is in accordance with 40 CFR 122.26 (d)(iv)(B)(1). Please note that the permittees may propose appropriate controls in their report to address pollutants in other types of discharges. Also see Section VI. of the Order.

11. **Comment:** Page 18, Section III, Item No. 8: Replace wording with "The permittees shall prohibit discharges into its storm water conveyance system that are prohibited by Chapter 5 of the Basin Plan".

Response: This is now Item 7 in the March 22, 2002 draft. The language in the current draft is consistent with State Board Order No. 2001-15.

12. **Comment:** Page 18, Section IV Item No. 1: Replace with: "Permittees shall prohibit the discharge of storm water or non-storm water into their MS4s that could cause an exceedance of receiving water quality standards (designated beneficial uses and water quality objectives) contained in the Basin Plan, and amendments thereto."

Response: Please see response to Items 8 and 11, above.

13. **Comment:** Page 19, Section VI, Item No. 4b: Replace with "Industrial wastewater or wash water resulting from hosing down or cleaning of fueling areas, material or chemical processing areas or vehicle service areas."

Response: Please note that some of the suggested additions are already included in other subsections of this section (see 5c. and 5f.).

14. **Comment:** Page 20, Section VI, Item No. 4e. Replace with "Discharges from cleaning, municipal, industrial, commercial, residential areas (including parking lots), streets, sidewalks, driveways, patios, plazas, work yards and outdoor eating or drinking areas, etc., using chemicals or detergents, without prior sweeping to remove litter, sediment and debris."

Response: Please note that the permittees may propose appropriate controls in their report to address pollutants in these types of discharges. These controls may include a prohibition on the use of chemicals and detergents and other BMPs.

15. **Comment:** Page 21, Section VIII, Item No. 2: Define "technology-based"

Response: This section has been deleted. However, this term is also used on page 14 of the fact sheet. "Technology-based standards" are the levels of pollutant reductions that dischargers must achieve, typically by treatment or by a combination of treatment and best management practices. These pollutant reductions may be achieved using best conventional technology (BCT) or best available technology economically achievable (BAT). Please refer to the permit's glossary section for the definition of BAT and BCT. Please refer to Sections 301, 302 and 402 of the Clean Water Act for further information on BAT and BCT.

16. **Comment:** Page 21, Section IX: What is a mechanism to determine the effect of septic system failures on storm water quality and what type of mechanism to address such failures will we have by July 1, 2003?

Response: In most cases where septic systems fail, there is a likelihood for surfacing of sewage. The dry weather flows and/or storm water runoff from these areas is likely to contain indicator parameters (elevated bacterial levels, high suspended solids, high BOD, etc.). Upstream and downstream monitoring of such areas should indicate if failing septic systems are impacting storm water quality in the area. A number of mechanisms can be used to address the problem including replacement of failing septic systems and connecting such systems to sanitary sewer lines.

17. **Comment:** Page 24, Section X, Item B1: Industrial Development is not listed. Is the reason for this that our current New Development Guidelines already require Industrial Developments to submit a WQMP, or is it because Industrial Development should not install structural infiltration BMPS or is it because they are already subject to the General Industrial Activities Storm Water Permit?

Response: This item is now on page 32, Section XII, Item B1. The language has been revised to include industrial developments.

18. **Comment:** Page 25, Section X, Item B2: Please define "significantly" change the hydrology, increase the urban runoff flow rates or velocities or increase the pollutant loading.

    Response: These terms have been deleted.

19. **Comment:** Page 26, Section X, Item C3: Why structural infiltration treatment BMPs should not be used in industrial and high traffic areas? Is the reason for this that these land uses require a waste discharge permit? Aren't high traffic areas and industrial areas a major source of storm water pollution? Would it not be better to require that infiltration systems in high traffic areas and industrial areas be designed to remove pollutants before they enter the ground, rather than allow these pollutants into storm drains without treatment? What kind of storm water treatment would be necessary to protect groundwater or storm water quality from these land uses?

    Response: This item is now on page 34, section XII, Item C.3. If infiltration systems are used in such areas, there is a greater potential for accumulation of pollutants in the soil and eventually in the groundwater. However, if proper controls are implemented, most pollutants could be eliminated and infiltration should not be a problem. In most cases, storm water treatment may not be necessary if appropriate BMPs are being implemented. If pollutants are present in the runoff, the infiltration system can remove pollutants such as bacteria, sediments, and some of the metals. However, if pollutants such as chlorinated solvents (e.g., TCE, PCE) are present, unless it is treated, soil and groundwater could be adversely impacted. The treatment methods for removal of these pollutants vary depending upon the type of pollutants. A combination of BMPs and structural treatment systems seems to be the most effective way to control pollutants in storm water runoff.

20. **Comment:** Page 28, Section XII, Item No. 2: Replace Permittee with Principal Permittee

    Response: This item is now on page 36, Section XII, Item No. 2. Some of the co-permittees also own flood control facilities and therefore, this requirement applies to all permittees who own or operate flood control facilities.

21. **Comment:** Page 29, Section XIV: The reference to storm water management plan should be changed.

    Response: This item is now on page 38, Section XVI. It has been changed to MSWMP.

22. **Comment:** Page 35, Attachment 2, Section A: Reach 3 of the Santa Ana River is not included in the attachment.

Response: Reach 3 is not a part of the San Bernardino County MS4 permit. Please see our response to Comment 2, above.

23. **Comment:** Page 41, Section II, Item No. 10: In the paragraph below Item No. 10, replace "Permittees have been monitoring" with "Principal Permittee has been monitoring"

Response: This item is now on page 58. The latest draft of the Order includes the requested change**.**

24. **Comment:** Page 41, Section III, Item No. 1: Replace the second sentence with "By December 1, 2003, the Principal Permittee in collaboration with the co-permittees shall…"

Response: Please note that by definition, "permittees" include principal permittee. The permittees can decide who should be responsible for this task. As such, no change to the current language is needed.

25. **Comment:** Page 41, Section III, Item No. 2: Replace with "By December 1, 2003, the Principal Permittee in collaboration with the co-permittees shall…"

Response: Please see our response to Comment 24, above.

26. **Comment:** Page 42, Section III, Item No. 4: Change to "By July 1, 2002, the Principal Permittee, in collaboration with the co-permittees…"

Response: Please see our response to Comment 24, above.

27. **Comment:** Page 43, Section III, Item No. 4c, Parts II, IV, VII, and VIII: The City is concerned about the scope of the "Integrated Watershed Monitoring Program" and would like additional detail on the workload for the permittees. Tasks described in items II, IV, VII and VIII are not normally handled by the permittees.

Response: Please note that the tasks identified here are currently being performed, to a limited extent, by the principal permittee in collaboration with the co-permittees. It is expected that this collaboration will continue and the workload increase from these requirements will not be significant. The draft permit only prescribes minimum requirements for the Integrated Watershed Monitoring Program and provides sufficient flexibility to develop a monitoring program that is economically and technically feasible.

28. **Comment:** Page 44, Section IV, Item No. 2d: The Regional Board needs to let us know the impacts on receiving waters.

Response: This item is now on page 61. Please note that the requirement referenced here is for the permittees to review the monitoring results and assess the impact of urban storm water runoff on receiving waters based on these monitoring results. The Regional Board maintains information on impaired waterbodies within the Region in accordance with Section 303(d) of the Clean Water Act. This information is available on the Regional Board's website.

29. **Comment:** Page 44, Section IV, Item No. 2e: The City has not been notified whether or not the City is in compliance with the water quality standards.

Response: The impaired waterbodies in San Bernardino County within the Santa Ana Regional Board's jurisdiction are listed in Table 2 and shown on Attachment 1 of the permit. These are waterbodies where the designated beneficial uses are not met and the water quality objectives are being violated (water quality standards are not being met).

30. **Comment:** Page 44, Section IV, Item No. 3: Please note that the Principal permittee must be responsible for the submittal of all required information to the Regional Board in a timely manner.

Response: This requirement is included in the permit (please see Section I. 4 of the permit). However, for the Principal Permittee to accomplish this task, timely submittal of the information to the Principal Permittee by the co-permittees is essential.

31. **Comment:** Page 45, Section V, Part IV: Change wording to: "Pollutant source investigation and control plan to prevent or reduce pollutants into MS4 systems from contributing to the exceedance of water quality standards."

Response: Please note that this reporting requirement is consistent with the requirements specified under Section IV.3.a of the permit.

32. **Comment:** Page 45, Section V, Part VII: Change the language to include hazardous substance spills.

Response: The latest draft of the Order includes this change.

33. **Comment:** Page 46, Section V, Part X: There is a typographical error.

Response: The typographical error has been corrected.

B. RESPONSE TO CITY OF RANCHO CUCAMONGA COMMENTS (October 2, 2001):

34. **Comment:** Finding Item #23: "Successful implementation of the provisions and limitations in this order will require the cooperation of other entities and all the public agency organizations within San Bernardino County……." This requirement puts the Permittee and co-Permittees in the position of expecting outside agencies to totally understand that they are a part of the program. Cities are now in the position that they have resistance from within their own agencies to these changes. How can we be expected to make outside agencies abide by these regulations? Will we now be required to enact new more stringent ordinances and impose fines instead of asking for cooperation? This will take a major part of staff time and foster some resistance from outside agencies. If this item is to be left in it is recommended that the Board put some type of public education/information program together that will encourage these agencies to cooperate. A campaign that address these issues should be set forth to the City Managers, Building Officials and Planners as well as all the other agencies listed in Attachment 3.

Response: 40 CFR 122.26(d)(iv) requires the municipal permittees to develop and implement a comprehensive planning process which involves public participation and where necessary inter-governmental coordination. The permittees are the owners/operators of the MS4 systems and have established legal authority to control the discharge of pollutants to these systems as was required under Regional Board Orders No. 90-136 and 96-32. These orders also required the municipalities to establish a public education/participation program and to incorporate watershed protection principles into the General Plan and CEQA documents. The Regional Board has notified the entities listed in Attachment 3 regarding the urban storm water runoff program and the need to cooperate with the municipalities in this program. Regional Board staff has provided information regarding the storm water program at council meetings, municipal training programs, and other regional and statewide seminars.

35. **Comment**: II. RESPONSIBILITIES OF THE CO-PERMITTEES: "The co-permittees shall be responsible for managing the storm water program within their jurisdiction and shall….." This puts the responsibilities of the program on each jurisdiction and needs to be emphasized throughout the order.

Response: Comments noted; we believe that this emphasis has been made throughout the order.

36. **Comment:** II. 2 "Enact and revise policies and ordinances necessary to establish and maintain adequate legal authority as stated in Section V (10) of this order and as required by Federal Storm Water Regulations, ……determine if they are authorized to impose administrative fines for storm water violations." Current ordinances are uncodified and will require public hearings before they can be enacted. Along with this, co-permittees

need to standardize these ordinances, which in itself could take six months. The task is not impossible however the timeline should take this into consideration. Another issue is the Regional Board has the power to impose fines under Civil Liabilities that have greater monetary penalty than what the municipalities can impose. Imposing fines under the Government Code is agreeable when dealing with residents and small businesses, but when you are dealing with large businesses the government code does not provide enough power.

Response: 40 CFR 122.26 (d) (iv) (2) requires the permittees to establish adequate legal authority to control the discharge of pollutants to the MS4 systems. During the first/second term permits (1990-2001), the permittees developed and adopted a model storm drain ordinance. This permit requires the permittees to evaluate their ordinances to determine if they are authorized to impose administrative fines for storm water violations. The legal authority should be equally applicable to all violators (residential, commercial, small business, or industrial) of the ordinances. The Regional Board takes enforcement actions against violators of its permits and the statewide general permits. The permittees are required to enforce their ordinances.

37. **Comment:** Section II. 3: "Conduct storm drain system inspections and maintenance in accordance with uniform criteria developed by the principal permittee." Either strike this completely or add, "developed by a sub-committee of the permittees". Each community has a different type of maintenance programs and is responsible to manage their own programs. Providing a standard MS4 maintenance program that is agreed upon by all co-permittees will insure a quality program and data.

Response: The latest draft of the Order includes the revised language.

38. **Comment:** Section II.11. "Pursue enforcement actions as necessary within its jurisdiction to insure compliance…." If ordinances are being reviewed and updated then there is no need to have this in the order. The connection and illegal discharges are addressed in section III, why repeat it?

Response: The draft permit requires the permittees to continue to enforce existing laws and regulations. It also requires the permittees to review existing laws and regulations to determine if these laws and regulations provide adequate legal authority as required under 40 CFR 122.26 (d) (iv) (2).

39. **Comment:** Section III.2, DISCHARGE LIMITATIONS: "Discharges <u>into and from</u> the municipal separate storm sewer systems…." Change to "Discharges from the municipal separate sewer systems…."

Response: The latest draft of the Order includes the revised language.

40. **Comment:** Section III.4, DISCHARGE LIMITATIONS: "The following discharges may not contain pollutants…." Change to "The following discharges are not typically significant sources of pollutants…." I feel by making this change, it will leave us a little room to modify in the future.

Response: Please see the changes to Section III.3 in the latest draft.

41. **Comment:** Section III.4i, DISCHARGE LIMITATIONS: "dechlorinated swimming pool discharges". This has become an issue with many jurisdictions since it was first put into the permit. While some jurisdictions have allowed swimming pool discharge, others have passed ordinances requiring sewer discharge of pool water. If a pool is dechlorinated it may still contain pollutant i.e. acid, soda ash or copper sulfates. Waste Water Treatment plants feel swimming pool water is "clean water" and hinders their operation. This item needs to be clarified or totally deleted.

Response: Generally, dechlorinated swimming pool water should not contain significant amount of pollutants and should be suitable for discharge to MS4 systems. If the discharge is to a dry streambed where it is likely to percolate before reaching any aquatic habitat areas, chlorine or slight acidity may not cause any environmental harm. The permittees need to make a determination on a case-by-case basis to determine if the discharge is suitable for the MS4 systems. If the discharge is not suitable for MS4 systems, most of the sanitation districts will accept the discharge.

42. **Comment:** Section III.4j, DISCHARGE LIMITATIONS: "non-commercial vehicle washing" The issue here is do we allow any car washing at all that is not at a residence. A fund-raiser can be commercialized at a business site. With the new development and re-development guidelines many new sites will capture most pollutants while older sites will either need to capture and treat runoff.

Response: Non-commercial vehicle washing includes residential car washing and car washing operations conducted by non-profit organizations for fundraisers. All such car washing operations should be subject to appropriate BMPs.

43. **Comment:** Section III.7, DISCHARGE LIMITATIONS: "….reduce discharge….including trash and debris….maximum extent practicable". At what point are we to capture this material, before entering MS4 or before it enters the conveyance?

Response: Source control, including removal of trash and debris before it enters the MS4 systems, may be more practical and economical than downstream treatment and/or capture. However, the discharge limitations are to be met at the point of discharge to waters of the State. So the permittees have the option of capturing these materials before entering the MS4 systems or prior to its discharge to waters of the State.

44. **Comment:** VI.1 Legal Authority/Enforcement : Strike "and enforce" and clarify the use of "into and from". In a perfect world we would be stopping discharges before they get to our MS4, but it is not practicable. We can control discharges to maximum extent practicable through education and information. If all else fails then enforcement is necessary.

Response: In accordance with State Board Order No. 2001-15, the "into" provision has been deleted. The permittees should not only establish adequate legal authority, but also must enforce their laws and regulations.

45. **Comment:** VI.2 Legal Authority/Enforcement : "formalized enforcement procedures developed by the Management Committee." Does this mean we are now to either put enforcement on police, code enforcement or do we put a new level into our program. A NPDES Code Enforcement Officer? It is difficult to have the police do anything outside the vehicle or penal code and many code enforcement staff are not versed enough to deal with NPDES issues. If we are to proceed with this, we need assistance in putting together a NPDES Code Violation book.

Response: The Management Committee appointed by the permittees developed an enforcement policy for uniform enforcement of the storm water ordinance. From the information provided to the Regional Board, it appears that the permittees agreed to abide by this enforcement policy. For an effective storm water management program, it is critical to train appropriate employees within each permittee organization. The principal permittee arranged a number of training sessions for municipal employees. Regional Board staff participated in these training sessions. It is anticipated that these training sessions will continue during the third term permit.

46. **Comment:** VI.3 Legal Authority/Enforcement : "The permittee shall continue to provide notification to Regional Board staff…. during site inspections…. sites regulated by the Statewide General Storm Water Permits or sites which should…. " This section needs some review are we to enforce or report?

Response: The permittees are required to conduct inspections and to enforce local ordinances. The Regional Board enforces the statewide General Permits and individual NPDES permits issued by the Regional Board. The permittees have been notifying Regional Board staff of any observed violations of the General Permit during their inspections. The requirements specified here formalize this procedure to avoid duplicative efforts and to make the best use of limited resources.

47. **Comment:** VI.4 Legal Authority/Enforcement : This section needs to be divided into a section for prohibiting and controlling. Some of these items need absolute prohibition while controls can be put on others. Items a), b), c), f), & i) should be prohibited while d), e), g), & h) should be controlled. All of these items can be further broken down as

some are totally controllable and others should be reviewed. Again the swimming pool issue comes up. Either swimming pool discharges should be allowed or not.

Response: The permittees have the flexibility to propose control mechanisms or to prohibit these discharges. The draft order requires the permittees to review their ordinances to determine if these kinds of discharges are effectively controlled.

48. **Comment:** VI.4.c) Legal Authority/Enforcement : Item c) refers to "portable toilet servicing" to my knowledge portable toilets are being controlled to some extent by public health. Is it being suggested we start monitoring portable toilets? If so, what are we to monitor? Cleaning, spills or both?

Response: The permittees are required to determine if wastes generated from portable toilet cleaning operations are causing a water quality problem in the MS4 systems. If other entities (such as public health) are regulating all aspects of portable toilet operations and maintenance, and if it is not causing a problem, the review should make such a determination.

49. **Comment:** VI.4.d) Legal Authority/Enforcement : Item d) "Wash water from mobile auto detailing and washing…. Carpet cleaning" these areas are controllable.

Response: Please note that the requirement is for the permittees to review their ordinances to determine the effectiveness of these ordinances in prohibiting or controlling these types of discharges.

50. **Comment:** VI.4.h) Legal Authority/Enforcement : Item h) "Pet waste, yard waste, debris, sediment, etc." this could include cats, horses, as well as dogs. Regarding yard waste banning backpack blowers has been tried, maybe a campaign showing that yard waste needs to be picked up not just blown out into the street. "debris" ?

Response: Please see response to Item 14, above.

51. **Comment:** VII. ILLEGAL DISCHARGES/ILLICIT CONNECTIONS; LITTER, DEBRIS AND TRASH CONTROL: "….review their litter/trash control ordinances to determine the need for any revisions" "…. permittees are encouraged to charactize trash, determine its main source(s)….." Eliminating trash at its source is not easy as the majority of trash comes from the community itself. A section in the Public Education and Outreach section needs to be added to include a campaign showing the community can help by cleaning up around their homes and businesses and as has been done on some of our current outreach, show how trash affects the ocean, rivers and streams.

Response: It appears that the commenter is proposing to modify the current public education program developed by the permittees to address these issues. The permittees

are required to review, and if necessary, modify the public education and outreach programs.

52. **Comment:** VIII. CRITERIA FOR ACCEPTING RUNOFF INTO THE MS4s: This is one of the sections that uses ensure (ensure – to make sure or certain; insure [inevitable]) in the context reduce runoff and discharges to maximum extent practicable before entering the MS4.

Response: This section has been deleted.

53. **Comment:** VIII.1 CRITERIA FOR ACCEPTING RUNOFF INTO THE MS4s: "….unless the MS4s are used to convey storm water to an approved regional treatment system." A treatment system would be practicable however would it be cost effective and who would build, maintain and fund these treatment plants. I know that the City of Santa Monica has built a multi-million dollar plant to treat runoff from their community. The system is backed up with several up stream BMP's to help reduce the debris and trash. Also, if there is a list of approved treatment systems, I would be interested in getting a copy to pass on to our planners for future development.

Response: As per State Board Order No. 2001-15, the "into the MS4" provisions have been deleted from the draft order. For the Orange County areas, the Irvine Ranch Water District is proposing natural treatment systems. The permittees are encouraged to develop regional solutions, such as the natural treatment systems. The Regional Board does not maintain a list of approved treatment systems. The principal permittee and some of the other permittees have regularly participated in the statewide Storm Water Quality Task Force and other such forums. Generally, such forums are a good source of information on storm water treatment systems.

54. **Comment:** Section VIII.2 CRITERIA FOR ACCEPTING RUNOFF INTO THE MS4s: "….technology-based standards." We would appreciate a copy of these standards.

Response: "Technology-based standards" are the levels of pollutant reductions that dischargers must achieve, typically by treatment or by a combination of treatment and best management practices (BMPs). These pollutant reductions may be achieved using best conventional technology (BCT), or best available technology economically achievable (BAT). Please refer to Sections 301, 302 and 402 of the Clean Water Act for further information on BAT and BCT.

55. **Comment:** Section IX.1 SEWAGE SPILLS, INFILTRATION INTO MS4 SYSTEMS FROM LEAKING SANITARY SEWER LINES, AND SEPTIC SYSTEM FAILURES. " The Executive Officer will request the local sewering agencies to work cooperatively with the permittees…." Change request to require. Some agencies are privately owned and need a little more encouragement to assist in the NPDES programs.

Response: The Regional Board may consider issuing General Waste Discharge Requirements for the sewage collection agencies within the Region to address sanitary system overflows. The Board conducted two public workshops on draft General Waste Discharge Requirements for the Orange County area sewage collection agencies.

56. **Comment:** Section IX.2 SEWAGE SPILLS, INFILTRATION INTO MS4 SYSTEMS FROM LEAKING SANITARY SEWER LINES, AND SEPTIC SYSTEM FAILURES. "….whose jurisdictions have 50 or more septic tank sub-surface disposal systems in use, shall identify….determine the effect of septic system failures…." Why is the number 50 used and what is the intent. Are we looking for residents/businesses that are not properly servicing septic tanks/leach fields or is it the concept of septic tank system affect on ground water. This needs some clarification as to the reasoning to monitor or do a study on septic systems.

Response: The intent here is to determine the impact of failing septic systems on storm water quality**.** In most cases where septic systems fail, there is a likelihood for surfacing of sewage. The dry weather runoff and storm water runoff from these areas are likely to contain indicator parameters (elevated bacterial levels, high suspended solids, high BOD, etc.).

57. **Comment:** Section IX.3 SEWAGE SPILLS, INFILTRATION INTO MS4 SYSTEMS FROM LEAKING SANITARY SEWER LINES, AND SEPTIC SYSTEM FAILURES. "….develop a unified response mechanism to respond to any sewage spill that may have an impact on receiving water quality." There are already spill response systems in place for <u>any</u> sewage spill. Change this to "continue to work with local sewer agencies in responding to sewage spills and provide documentation to permittees."

Response: The intent of this requirement is for the permittess to develop and implement a unified response mechanism to respond to sewage spills. It is likely that some of the jurisdictions may be already doing this.

58. **Comment:** Section IX.4 SEWAGE SPILLS, INFILTRATION INTO MS4 SYSTEMS FROM LEAKING SANITARY SEWER LINES, AND SEPTIC SYSTEM FAILURES. "….review…..current programs for portable toilets…." This City has no oversight program for portable toilets only a business license requirement. The County Environmental Health Department permits portable toilets from a public health standpoint.

Response: The permittees are required to determine if wastes generated from portable toilet cleaning operations are causing a water quality problem in the MS4 systems. If other entities (such as public health) are regulating all aspects of portable toilet operations

and maintenance, and if it is not causing a problem, the review should make such a determination.

59. **Comment:** Section X. NEW DEVELOPMENT (INCLUDING SIGNIFICANT RE-DEVELOPMENT): Again this section makes reference to the word "ensure".

Response: Comment noted.

60. **Comment:** Section X.A. NEW DEVELOPMENT (INCLUDING SIGNIFICANT RE-DEVELOPMENT): GENERAL REQUIREMENTS: The items in this section are possible however some of the timeframes are going to be difficult to meet. For instance changing a General Plan, Zoning, Codes, or Development Guidelines take time to be reviewed by both the City and the Business community.

Response: Comment noted. Please note that the requirements are to review the current programs and policies to determine if storm water-related issues are properly considered and addressed.

61. **Comment:** Previously, most all the construction, industrial & commercial sites have been reviewed, inspected and advised if any violations and persistent violators have been reported the Regional Board. Is, the review, inspection & advisement going to shift to the permittees not the Regional Board?

Response: The permittees are required to conduct inspections and to enforce local ordinances. The Regional Board enforces the statewide General Permits and individual NPDES permits issued by the Regional Board. The permittees have been notifying Regional Board staff of any observed violations of the General Permit during their inspections. The requirements specified here formalize this procedure to avoid duplicative efforts and to make the best use of limited resources.

62. **Comment:** Section X.B. NEW DEVELOPMENT (INCLUDING SIGNIFICANT RE-DEVELOPMENT): WATER QUALITY MANAGEMENT PLAN(WQMP) FOR URBAN RUNOFF (FOR NEW DEVELOPMENT/SIGNIFICANT RE-DEVELOPMENT)

1. d) "Automotive repair shops…." Is this any automotive repair shops? No square footage for re-development?
   i) "Retail gasoline outlets" same question as 1.d)

Response: The requirements for retail gasoline outlets have been deleted from the latest draft. All automotive repair shops under the listed SIC codes are included; there is no square footage specified here.

63. **Comment:** Section X.B. 3. Volume
1. remove "24-hour"

Response: The volume of runoff produced from a 85th percentile 24-hour storm event is one the criteria for design of the volume based BMPs.

64. **Comment:** Section X.B. 3. Volume
2. Change to "The maximized capture volume for the area, from the volume capture formula recommended in……"

Response: The language in the draft Order is consistent with other MS4 permits and seems to be the appropriate language.

65. **Comment:** Section X.B. 3. Volume
4. Delete this entire section as it is already covered in previous sections 1-3 of volume.

Response: Please note that Item 4 is not covered under Items 1-3 of this section.

66. **Comment:** Section X.B Volume The last paragraph is section X referring to "….permittees may propose any equivalent sizing criteria for BMPs……." Should be moved to before item "C" or given a subtitle indicating Alternatives.

Response: Please note the changes in the latest draft.

67. **Comment:** Section XI.3 PUBLIC EDUCATION AND OUTREACH: "The Committee shall ensure implementation of BMPs listed in the ROWD (Appendix C) for restaurants, automotive service centers, gasoline service stations and other similar facilities." This should read "The Co-permittees shall verify implementation of BMPs…."

Response: Please note the changes in the latest draft.

68. **Comment:** Section XI.4 PUBLIC EDUCATION AND OUTREACH: Regarding a hotline to report illegal dumping. This has been addressed several times with the final conclusion that each co-permittee needs to put a number local number on the flyers and/or have citizen's call 911.

Response: In situations where there is an immediate threat to public health and the environment, the use 911 may be appropriate. However, to report other types of illegal dumping the use of 911 may not be appropriate.

69. **Comment:** Section XI.5 PUBLIC EDUCATION AND OUTREACH: We have already developed most of this information. This should suggest review of current efforts to determine if more items are needed.

Response: Comment noted.

70. **Comment:** Section XII. MUNICIPAL FACILITIES/ACTIVITIES: Rather then (sic) develop fact sheets which we already have, we should develop a condensed BMP handbook for each area of concern and incorporate all of the information we have gathered over the last DAMP & ROWD. Why reinvent the wheel let's just improve it.

Response: If the Management Committee decides to develop and distribute condensed BMP handbooks in lieu of BMP fact sheets, that should satisfy this requirement.

71. **Comment:** Section XVII. PERMIT EXPIRATION AND RENEWAL: Expiration date should reflect the actual date of adoption.

Response: Comment noted; the expiration date will be changed to reflect the date of adoption.

C. RESPONSE TO CITY OF FONTANA COMMENTS:

72. **Comment:** The City is concerned about the repeated use of the words, *ensure and insure and assure.*

My Webster Dictionary states that insure means to provide or obtain insurance on or for something, or to make certain.

- The same dictionary states that ensure means to guarantee.
- The same dictionary says that assure means to make certain of attainment.

How is it possible for any agency to comply with these terms??

Response: Where appropriate, clarifications have been added.

73. **Comment:** Permit page 14, Item # 47.
    a. *Comments,* needs to be defined. If we are talking about during management program development, all of our meetings are open to the public. Do we need to provide another public forum for these issues?
    b. If we are referring to the implementation stages, does this mean that we are required to send the Board copies of all complaints?

Response: The storm water regulations, at 40 CFR 122.26(d)(2)(iv), require public participation in the comprehensive planning process for storm water management programs. The Regional Board should be notified of all appropriate comments received from the public during this public participation process.

74. **Comment:** Permit page 22, Item # 4e.
    a. How can we possibly control discharges from these discharges in the residential areas?

Response: Section VI. 4.e. of the Order requires the permittees to review their ordinances to determine the effectiveness of these ordinances in prohibiting or otherwise controlling these types of discharges. Public education should be an important part of this program.

75. **Comment:** Permit page 22, Item #5.
    a. The word *debris* needs to be defined.

Response: Debris is defined as the remains of anything destroyed or broken, or accumulated loose fragments of rock.

76. **Comment:** Permit page 23, Item#VIII-2.
    a. What are the technology-based standards that we are being asked to *ensure?*

Response: "Technology-based standards" are the levels of pollutant reductions that dischargers must achieve, typically by treatment or by a combination of treatment and best management practices, or BMPs. These pollutant reductions may be achieved using the best conventional technology (BCT) or the best available technology economically achievable (BAT). Please refer to the permit's glossary section for the definition of BAT and BCT. Please refer to Sections 301, 302 and 402 of the Clean Water Act for further information on BAT and BCT.
Please refer to Sections 301, 302 and 402 of the Clean Water Act for further information on BAT and BCT.

77. **Comment:** Permit page 23, Item#IX-2.
    a. Is the Board really asking the Cities to inspect private property septic systems? This would be a full time position.

Response: The permittees are generally required to determine if septic system use as a whole within their jurisdiction is causing or contributing to water quality problems in storm water runoff from the municipal separate storm sewer systems. The permittees are provided discretion on how to achieve that goal.

78. **Comment:** Funding

a. These items are un-funded. Since it would require a vote by the citizens to pass a new tax, which we know won't happen, the only way most cities could fund the items called for in this permit would be to reduce public safety funding.

Response: Please note that the Order implements federal laws as per the 1987 Clean Water Act Amendments, Section 402(p) and the implementing regulations contained in 40 CFR Parts 122, 123, and 124. These programs and policies are necessary for water quality protection. During the last two permit terms, the permittees have implemented most of the essential elements of the storm water program. The proposed draft includes improvements to these programs and policies and are consistent with the federal and state laws and regulations. Please note that the federal regulations, 40CFR Part 122.26(d)(1)(vi), also require the permittees to provide adequate funding for the storm water program.

II. RESPONSE TO COMMENTS ON THE THIRD DRAFT (JANUARY 9, 2002)

A. RESPONSE TO CITY OF ONTARIO'S COMMENTS DATED JANUARY 31, 2002:

79. **COMMENT:** Fact Sheet Section V B. Table 2 and Attachment 1 Watershed Map showing 303(d) waterbodies**.** Table 2 does not include Reach 3 of the Santa Ana River which is impaired for TDS, Salinity, Chlorides and Nutrients, Prado Lake which is listed for Nutrients and Pathogens, or Mill Creek (Prado Area) which is listed for Nutrients, Pathogens and Suspended Solids. Attachment 1 is very difficult to read and does not show all major surface water bodies or all impaired water bodies in the watershed, i.e. San Antonio Creek, Day Creek, Deer Creek, Reach 5 or 6 of the Santa Ana River.

RESPONSE: Reach 3 of the Santa Ana River was not included in Table 2 because it is located outside the San Bernardino County project area. Attachment 1 was intended to show only the boundaries of the project area and it does not include all surface waterbodies within the project area.

80. **COMMENT: Fact Sheet Section IX B**. **Receiving Water Limitations.** The City is not familiar with Order No. WQ 99-05. Please provide us with a copy of this order for our review.

RESPONSE: Order No. WQ 99-05 may be downloaded from the following website link: http://www.swrcb.ca.gov/resdec/wqorders/1999/wqo99.html.

81. **COMMENT:** Section I, Item 19**.** Last sentence " Discharge Prohibition Section III, should be Item 3 not 4 of this order.

RESPONSE: Item number has been corrected.

82. **COMMENT:** Section I, Item 47 (Finding 47). Why does it state that the permittees established a subcommittee "and developed a list of routine structural and non-structural Best Management Practices for new development (1-5 acres)."? -This is not our criteria for application of the New Development Guidelines.

RESPONSE: Reference to "1-5 acres" has been deleted from Finding 47.

83. **COMMENT:** Section III, Item 2. Discharge Limitations/Prohibitions**.** Replace with "The permittees shall implement and require the implementation of best management practices to reduce pollutants in storm water to the maximum extent practicable."

RESPONSE: Please note that this language is the same as in other recently adopted MS4 permits and is consistent with Section 402(p) of the clean Water Act and the storm water regulations contained in 40 CFR Parts 122, 123, and 124.

84. **COMMENT:** Section IV, Item 1**.** Replace wording with "Discharges from the MS4s of storm water, or non-storm water, for which a Permittee is responsible, shall not cause or contribute to exceedances of receiving water quality standards …"

RESPONSE: The issue of Receiving Water Limitations in the MS4 permits have been intensely debated and appealed to the State Board. The language used here is consistent with the guidance provided in State Board Order No. WQ 99-05.

85. **COMMENT:** Section IX, Item 4.: Municipal Inspections of Industrial Facilities**.** This section of the permit requires that the City conduct monthly compliance inspections at al**l** businesses where inappropriate material and waste handling or storage practices are observed, or there is evidence of past or present unauthorized, non-storm water discharges by July 1, 2003. When the City begins to accelerate its inspection program in response to this permit, it will be impossible for the City to know how many industries will be improperly storing materials or discharging non-storm water. Therefore, it is impossible to budget staff to ensure this requirement can be met. It is also excessive to require the inspection of a facility monthly, when a Notice of Correction has been issued, a SWPPP has been prepared to address problems or a facility is on a Compliance Time Schedule to make the required corrections. High priority sites will be inspected annually anyway. The City should be able to make the decision as to how often a business needs to be re-inspected and when. For example, a Notice of Correction may require compliance by a specific date or the business submits a compliance time schedule for

approval by the City with a final due date. This City should inspect the facility on the date that the business agreed to be in compliance.

RESPONSE: This section has been revised to clarify the language and to provide some flexibility to the permittees with respect to inspection frequencies.

86. **COMMENT:** Section X. Item 5. Request extension until end of permit term.

RESPONSE: Regional Board staff feels that the July 1, 2004 deadline, for inspecting high priority commercial sites, gives the permittees a reasonable amount of time by which to complete the required inspections.

87. **COMMENT:** Section XII, B, Item 1**.** By July 1, 2003, the permittees shall review their existing ~~BMPs~~ **WQMP** for new developments to determine the need for developing any additional ~~WQMPs~~ **BMPs** for urban runoff. Under this same section, it is surprising to us that Retail Gasoline Outlets were eliminated from the list of project types that would require this review for additional BMPs. Retail Gasoline Outlets were listed in the first draft of this NPDES Permit, under this same section. We currently list Fuel Dispensing businesses in Table 4-1 and Table 4-2 of Chapter 4 of the ROWD as candidate New Development/Redevelopment projects for application of the WQMP requirement.

RESPONSE: Section XII, B, Item 1 has been revised. Retail Gasoline Outlets (RGOs) were removed from the list of projects requiring additional BMPs based on the State Board's SUSMP decision, Order WQ 2000-11. State Board concluded that because RGOs are already regulated and may be limited in their ability to construct infiltration facilities or to perform treatment, they should not be subject to the BMP design standards at this time. The State Board recommended that the Regional Board undertake further consideration of a threshold relative to size of the RGO, number of fueling nozzles, or some other relevant factors. However, the State Board indicated that the decision should not be construed to preclude inclusion of RGOs in the SUSMP design standards, with proper justification, when the MS4 permit is reissued. The March 1997 California Stormwater Quality Task Force BMP Guide for RGOs can be used by the permittees as a starting point in drafting BMP requirements for RGOs. However, the permittees can require other BMPs, as they deem necessary.

88. **COMMENT: Section XIII, Item 3.** Change the last sentence "The permittees shall distribute these BMP brochures **or BMP Fact Sheets** to these facilities during inspections …"

RESPONSE: The language **has been** changed.

B. CITY OF CHINO HILLS' COMMENTS (DATED JANUARY 23, 2002) – REPRESENTED BY RUFUS YOUNG, JR. OF BURKE, WILLIAMS & SORENSEN, LLP

89. **COMMENT:** The Regional Board has no authority to regulate the manner in which cities exercise their land use authority.

RESPONSE: Storm water and other water quality issues must be considered early on in the planning stages of a project. The draft permit requires the permittees to review their planning documents to determine if water quality protection principles and policies are properly addressed in those documents. This in no way infringes on the permittees' land use authority.

90. **COMMENT:** The Regional Board exceeds it authority by requiring property owners to "conserve natural areas" and "maximize the percentage of permeable surfaces to allow more percolation of storm water into the ground" without providing "just compensation."

RESPONSE: This section of the draft permit requires the permittees to consider such factors as conservation of natural areas and maximization of permeable areas to minimize adverse water quality impacts due to the development. `It does not require conservation, but only suggests that it is one means to address the water quality issue. In certain situations, it may be possible to conserve natural areas and to maximize permeable areas and protect water quality without compromising on other aspects of the proposed project. Once again, this requirement is intended to protect water quality through proper planning procedures.

91. **COMMENT:** In Part IV.2, RECEIVING WATER LIMITATIONS, the "cause or contribute" language of the Order must be modified. The State Board's language in SWRCB WQ99-05 excised the "cause or contribute" language from Order 98-01, and it provides the language which must be used in municipal storm water permits. The balancing required by CWA Section 402(p)(3)(B)(iii) and California Water Code Section 13241(c) and (d) clearly authorizes and requires a regional board to reject inclusion of an "or contribute" standard, notwithstanding SWRCB Memorandum on Receiving Water Limits in Municipal Storm Water Permits, of 1999.

RESPONSE: The "cause or contribute" language found in Section IV.1, Receiving Water Limitations, is essentially identical to that found in the Receiving Water Limitation section of SDRWQCB 2001-01, which states that "Discharges from MS4s that cause or contribute to the violation of water quality standards … are prohibited." The State Board in WQ 2001-15, found the Receiving Water Quality Limitations in SDRWQCB 2001-01 consistent with SWRCB 99-05. Therefore the "cause or contribute" language will

remain.

92. **COMMENT:** The imposition of "Peak Flow Control" measures stretches the Order beyond the authority of the Board. Part XII.B.3 of the Order would impose the requirement to control the volume or maximum flow or runoff for all new development and significant redevelopment. The Board's authority under the CWA's MS4 program is limited to controls on pollutant discharges.

RESPONSE: Section XII.B.3 describes the volume-based and flow-based numeric sizing criteria for treatment or infiltration devices to reduce pollutant loading in storm water. State Board in Order WQ 2000-11 upheld similar language in the Los Angeles Region's SUSMP requirements.

93. **COMMENT:** The definition of "redevelopment" in the Order is inconsistent with and preempted by the controlling EPA definition of "redevelopment." EPA intends the term "redevelopment" to refer to alterations of a property that change the "footprint" of a site or building in such a way that results in the disturbance of equal to or greater than 1 acre of land. The term is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse storm water quality impacts and offer no new opportunity for storm water controls.

RESPONSE: This definition of "significant redevelopment" as the disturbance of equal to or greater than 5,000 square feet is same as that adopted in the Los Angeles Regional Board SUSMP Order and the San Diego Regional Board, San Diego County MS4 Permit, both of which have been reviewed and upheld by State Board. Please see State Board Order WQ 2000-15.

94. **COMMENT:** The Order should exempt discharges from federal and state facilities, agricultural storm water discharges and irrigation return flows within a co-permittee's boundaries from Part III, "Discharge Limitations/Prohibitions."

RESPONSE: Please see Finding 12; the Regional Board recognizes that the permittees may lack jurisdiction to regulate these types of discharges.

95. **COMMENT:** The Regional Board has failed to comply with the California Environmental Quality Act ("CEQA") with respect to provisions of the Order not required by the Clean Water Act.

RESPONSE: The issuance of the MS4 permit in its entirety is exempt from the documentary requirements of CEQA pursuant to Water Code Section 13389. Contrary to the comment, the provisions of the Order do not go beyond the requirements of the Clean Water Act. Accordingly, as the State Board recently concluded, CEQA does not apply in the manner asserted. Please see SWRCB Order WQ 2000-11.

96. **COMMENT:** The Order would impose unfunded mandates in violation of the California Constitution. The Order would require numeric design standards; inspections of facilities subject to state general permits; response to SSOs; and imposition of development and redevelopment controls. The imposition of these requirements, none of which are required under the Clean Water Act, constitute imposition of unfunded mandates on the co-permittees in violation of the California Constitution.

RESPONSE: First, and most importantly, the Order does not purport to implement state law, but rather implements federal law as provided in the Clean Water Act and the municipal storm water regulations promulgated thereunder. Second, the State Board has already addressed the issue in its SUSMP Decision, Order WQ 2000-11. There, the State Board indicated that its earlier decisions held that the constitutional provisions cited by the commenter have no application to the adoption of NPDES permits. The SWRCB cited San Diego Unified Port District, Order No. 90-3 for the proposition that the Constitutional mandate requirements do not apply to NPDES permits issued by Regional Board, in that the NPDES permit program is a federally-mandated program, rather than state-mandated. (Id, at page 14) The Regional Board's issuance of the MS4 permit does not require that the State provide funding for its implementation.

97. **COMMENT:** The Order should be revised to delete requirements that co-permitteees are to assume inspection responsibilities for facilities subject to state general permits which are the sole responsibility of the Regional Board. The State Board assigned General Permit duties to the regional boards.

RESPONSE: Federal regulations require the permittees to control the discharge of pollutants from industrial and construction sites. 40 CFR 122.26(d)(2)(I) states that the permittees must demonstrate that they have adequate legal authority to control "the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity," prohibit "illicit" discharges to the municipal storm sewer," control "the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water," and "carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer." Please note that implementation and enforcement of the State's General Permits will continue to be the responsibility of the Regional Board. However, at a number of these sites, the daily changes in site conditions and practices and the potential for discharges from these sites to cause or contribute to exceedances of water quality objectives require this extra level of local inspection and enforcement.

98. **COMMENT:** Part III.3.n), providing for a conditional exemption on "emergency fire fighting flows" but not training flows, is overly restrictive and should be broadened to exempt non-emergency and training flows.

RESPONSE: Non-emergency and training flows have not been exempted from the Order because they are planned events in which best management practices to eliminate or reduce pollutants could be easily and reasonably implemented.

C. CITY OF CHINO HILLS' COMMENTS (DATED JANUARY 17, 2002) – REPRESENTED BY BURKE, WILLIAMS & SORENSEN, LLP

99. **COMMENT:** The report "Cost of Storm Water Treatment for the Los Angeles County NPDES Permit Area," June 1998, by Brown & Caldwell, is evidence that the cost of storm water compliance for the areas affected by very similar storm water permits issued for a very similar geographic area by the Los Angeles Regional Board, will exceed $50 Billion. Evidence of costs for the San Bernardino County area are shown in Table C-10 of "Cost of Storm Water Treatment for California Urbanized Areas," CTSW-RT-98-097-d. These storm water cost studies must be taken into consideration and addressed in reevaluating the requirements to be imposed on the co-permittees. This is because MS4 permits are issued under Section 402(p)(3)(B)(iii) of the CWA. Similarly, Section 13263(a) of the California Water Code requires regional boards, when prescribing waste discharge requirements, to take into consideration the provisions of Sections 13241(c) and (d). Those sections require a balancing similar to that required by Section 402(p)(3)(B)(iii) of the CWA. These sections clearly authorize and require the Board to consider, and to justify, the costs of permit compliance.

RESPONSE: Please note that the $50 billion cost quoted in the comment letter is from a report that Caltrans prepared for advanced treatment of storm water. The draft permit requires the permittees to control the discharge of pollutants in storm water runoff to the maximum extent practicable through the development and implementation of management programs. The draft does not advocate or require complete treatment. On November 19, 2001, we responded to this issue in response to a similar comment on the North Orange County MS4 permit (letter from Gerard Thibeault to Rufus Young). As indicated here, the cost estimates provided in the comment letter are not relevant and the commenter should provide cost estimates that are specific to the regulatory provisions of this draft permit.

The public adoption process for the Tentative Order enables the SARWQCB to consider all potential impacts, beneficial and detrimental, consistent with the public interest. The regional board is not required to undertake a formal Cost/Benefit Analysis, or other comprehensive economic analysis for the issuance of waste discharge requirements. While regional boards are required to consider economic factors in the development of

basin plans (W.C. 13241), regional boards are not specifically required to undertake Cost/Benefit Analysis for NPDES permits. Neither do federal regulations compel reliance on any particular form of economic analysis in the implementation of requirements based on the MEP performance standard; the admonition quoted from 64 Fed. Reg. 68722 & 68732 calls for flexible interpretation of MEP based on site-specific characteristics and "cost considerations as well as water quality effects…." Thus, while the regional board is advised to consider costs as a factor in determining the reasonableness or practicability of requirements, there is no state or federal mandate for a more formal economic analysis involving the development of Cost/Benefit or Cost-Effectiveness relationships. The SARWQCB considers factors that balance environmental protection with job creation, housing construction and affordability, and maintain a healthy economy during the process of adoption of the Tentative Order. It is the responsibility of the SARWQCB to protect the beneficial uses of receiving waters within the Santa Ana Region through the development and enforcement of waste discharge requirements and permits while considering the costs required to protect or restore those waters. It is the responsibility of the permittees, however, to secure the resources and implement and enforce the programs necessary to meet the requirements of the Tentative Order.

The SARWQCB has reviewed information regarding the costs associated with implementation of requirements for discharges to MS4 as well as the costs incurred as a result of exceedances of receiving water quality objectives associated with discharges from MS4. While there will be, undoubtedly, increased costs to municipalities to implement requirements of the Tentative Order, the increased burden associated with these requirements is not unreasonable in view of the following factors: municipalities can pass costs for planning and permitting on to permit applicants; municipalities can impose fees on persons who use MS4 infrastructure or require services from the municipality; municipalities can incorporate pollution prevention and control planning into existing planning activities; and municipalities can incorporate pollution control programs into existing regulatory functions. It is the responsibility of the permittees to develop and implement a balanced program in compliance with the Tentative Order that will minimize costs and maximize benefits. Finally, to the extent that the comment suggests that the Regional Board must conduct a cost-benefit analysis by demonstrating that the water quality benefits outweigh the economic costs, the SWRCB has rejected that argument. (SWRCB Order WQ 2000-11, pp 19-20.)

D. COMMENTS FROM CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY – DATED FEBRUARY 8, 2002

100. **Comment:** Finding #14, Pg. 5. Increases in runoff volume and velocity have not been proven to cause scour, erosion, etc. Therefore, we suggest changing the wording of this section to, " Increase in runoff volume and velocity may cause scour, erosion (sheet, rill and/or gully), aggradation (raising of a streambed from sediment deposition), changes in fluvial geomorphology, hydrology, or changes in the aquatic ecosystem."

Response: The language has been changed as recommended.

101. **Comment:** Finding #20, Pg. 7. MEP is defined in a footer on page 7 to be maximum extent possible… As clarified by staff at the January 23rd workshop, MEP should be defined as maximum extent practicable.

Response: The MEP definition has been changed to maximum extent feasible in the footnote to be consistent with the definition in the Orange County MS4 Permit.

102. **Comment:** Finding # 21, Pg. 7. Protection of beneficial uses of receiving waters sounds like something that everyone should support. However, upon further review, it becomes evident that some beneficial uses (municipal water supply, rec1, etc.) within some receiving waters are not practicable or achievable within the realm of MEP. These beneficial uses were last updated in the 1995 Basin Plan. The problem with this last update is that there is no proof that achievability, housing, or other economic factors were considered when these beneficial uses were established.

Response: Please note that most of these beneficial uses were established during the development of the 1975 Basin Plan. The requirement to consider the above stated factors (Water Code Section 13241) was adopted later. The 1975, 1984, and the 1995 Basin Plans were developed and adopted with public input and consistent with State and federal laws and regulations. The draft permit implements the Basin Plan requirements and storm water laws and regulations. As new water quality objectives are established or if existing water quality objectives are revised, these factors will be taken into account. The Regional Board, in adopting Waste Discharge Requirements must implement the current Basin Plan beneficial uses.

103. **Comment:** Finding # 29, Pg. 9. The Permittees have been spending a lot of money on storm water monitoring, however it does not appear that any of this information is being used to direct Permit requirements. As noted by the monitoring results specified in this section, as well as monitoring results from other regions, residential land-use has not been identified as containing elevated pollutant levels, yet new residential development continues to be targeted heavily in municipal storm water permits. The monitoring data being collected should be used to target requirements and thus limited resources on high-priority areas of concern, not on areas that do not warrant a high level of concern.

Response: The number of enforcement actions based on evidence collected by Regional Board staff during inspections of construction sites indicates that constructions sites continue to be a significant source of pollutants in storm water runoff. Furthermore, monitoring requirements are an integral part of all NPDES permits and they are critical to define water quality status and trends, to identify sources of pollutants, to characterize pollutants and to evaluate the effectiveness of existing management programs.

104. **Comment:** Finding #50, Pg. 14. In promulgating MS4 permits, the Regional Board has routinely relied upon Water Code section 13389 to exempt itself from CEQA's requirement that all actions impact the environment be analyzed completely for the public benefit. However, this statement vastly overstates the CEQA exemption. This Permit fails to appreciate the statutory scheme of Chapter 5.5 of the Water Code (containing Section 13389) which was not enacted to excise independent state law requirements from CEQA, but simply to ensure that the regional boards could comply with the minimal requirements of the federal Clean Water act without having first to conduct an EIR. This concern is absent for permit provisions not required by the Clean Water Act.

Response: Contrary to the comment, the provisions of this permit do not go beyond the requirements of the Clean Water Act. Accordingly, as the State Board recently concluded, CEQA does not apply in the manner asserted. Please see SWRCB Order WQ 2000-11.

105. **Comment:** Part IV. Receiving Water Limitations, Pg. 18, Item #1. This provision is not consistent with, and in fact violates, SWRCB Order No. 99-05. In fact, it is the "shall not cause or contribute" language that Order 99-05 expressly struck and replaced. "It is hereby ordered that Order WQ 98-01 be amended to remove the receiving water limitation language contained therein and to substitute the EPA language." (Order 99-05, p.1, emphasis added.) The "EPA language" referred to does not include the "cause or contribute" language that was present in Order 98-01. On the contrary, the EPA language outlines a series of practicable safeguards to reasonably accomplish Basin Plan objectives. Thus, this Permit's strict receiving water prohibitions do not comport with Order 99-05. Further, Order 99-05 expressly includes in its language that it is a "precedential decision," unlike the SUSMP Order. Order 99-05 states outright that the "cause or contribute" language of 98-01 is removed and replaced with the language of Order 99-05. The provisions are mutually exclusive, and Order 99-05 resolved which controls.

Response: The "cause or contribute" language found in Section IV.1, Receiving Water Limitations, is essentially identical to that found in the Receiving Water Limitation section of the San Diego County Permit. The State Board in Order WQ 2001-15, found the Receiving Water Limitations in the San Diego County Permit to be consistent with SWRCB Order WQ 99-05. Therefore, the "cause or contribute" language is appropriate.

106. **Comment:** Part XII. New Development, Pg. 29, Item #5. By virtue of this reference, and numerous others like it throughout the Permit, it is clear that the Permit attempts to regulate not only the quality of water, but quantity of water as well. Under the CWA's NPDES program, the Regional Board is empowered to regulate pollutants. This does not include quantities of water, absent some showing that the regulation is aimed at

pollutants, not simply the existence of a volume or flow rate the Regional Board deems undesirable.

Response: The draft Permit no longer requires maintaining pre-development site hydrology, but instead requires to minimize downstream erosion and maintenance of stream habitat. However, no net increase in post-development runoff flow and velocity remains a goal. U.S. EPA guidance points out that impacts on receiving waters due to changes in hydrology can often be more significant than those attributable to the contaminants found in storm water discharges.

107. **Comment:** Part XII. New Development, Pg. 29, Item #5a. Whether or not intended, there can be no question that the provisions of the Permit have a tremendous impact on the land use decision-making authority of local agencies. To name just a few, the Permit mandates CEQA changes, General Plan amendment procedure changes, and limitation on land uses in areas designated ESAs, regardless of the fact that preexisting designations on which the Permit relies had nothing to do with storm water considerations.

Response: Storm water and other environmental impacts must be considered early on in the planning stages of a project. The draft permit requires the permittees to review their planning documents to determine if water quality protection principles and policies are properly addressed in those documents. This does not, however, as suggested, require changes to CEQA or the General Plan and in no way infringes on the permittees' land use authority.

108. **Comment:** Part XII. New Development, Pg. 30, Item #7b. As to making broad based conclusory statements regarding imperviousness, we ask that the permit recognize a more sophisticated level of analysis. While we recognize the superficial conclusion that more imperviousness may mean more deposit of contaminants (such as car exhaust) and less natural absorption of runoff, to brand imperviousness as categorically evil ignores some significant planning and environmental objectives. There cannot be increases in density development without some increase in imperviousness. However, it is specifically higher density that is the key to concepts such as "smart growth" and more concentrated urban centers. This is not density for density's sake, but density for the sake of concentrating development and increasing the potential for conservation. To inhibit imperviousness across the board, without sufficient acknowledgement and consideration of density's potential to result in increased open space and conservation elsewhere is, at best, short-sighted and counterproductive. The Permit must allow for and encourage a more comprehensive consideration as to whether density and imperviousness are in reality an exchange for greater undisturbed preservation elsewhere.

Response: We are supportive of smart growth and low impact development concepts in designing new developments. However, the concept suggested, analogous to implementation of mitigation measures to allow disturbance of an environmentally

sensitive area, entertains the concept of an equal exchange; i.e. no net loss of a habitat or destruction of a sensitive area. When this concept is applied to urbanization in a previously undeveloped area, equal exchange is not achievable as there will always be a net loss of undisturbed land. We agree that in a comprehensive planning process, all factors must be considered and the projects should be designed to minimize any adverse environmental impacts.

109. **Comment:** Part XII, New Development, Pg. 31, Item #1, and Pg. 36, Item #4. We object to the Permit's "one size fits all" approach to implementation. Lumping all of these development categories into the same regulatory program ignores obvious thresholds that would result in development and regulatory savings without compromising the efficacy of the program. Specifically: 1) subjecting a 10-unit affordable infill housing project to the same regulatory standards as a 100,00 square-foot commercial shopping center defies logic. The foreseeable impacts of such projects are vastly different, necessitating different levels of regulation and enforcement. The Permit should reflect the obvious realities. 2) The Permit should distinguish between respective land use categories and the types of contaminants of concern associated with such land uses. To subject all land uses across the board to a one-size fits all regulatory mandate misdirects precious resources in unnecessary ways.

Response: These requirements are consistent with other MS4 permits recently adopted by the Santa Ana, Los Angeles, and the San Diego Regional Boards and recent State Board decisions. The issue had been subjected to intense scrutiny during the SUSMP process at the Los Angeles Regional Board. The Los Angeles SUSMP requirements and the San Diego MS4 permits were appealed the State Board. Please see State Board Orders WQ 2000-11 and WQ 2001-15. The State Board has deemed the SUSMP requirements as MEP.

110. **Comment:** Part XII. New Development, Pg. 32, Item 1g. The State Board expressly rejected the inclusion of environmentally sensitive areas (ESAs) as a "development category" in Order WQ 2000-11. In particular, the State Board held that the proposal to include ESAs was inappropriate for three reasons: (1) the proposal lacked meaningful application thresholds; (2) such areas are already subject to "extensive regulation under other regulatory programs"; and (3) ESAs are not a "development category." (SWRCB Order WQ 2000-11, pp. 24-25[hereinafter "SUSMP Order"].)

Response: When the State Board withdrew Environmentally Sensitive Areas (ESAs) as a priority development project category from the LARWCB SUSMP in Order WQ 2000-11, Regional Boards were given the discretion of adding Environmentally Sensitive Areas in future permits as long as a size threshold is provided. Section XII.B.g of the proposed Permit provides a size threshold of 2,500 square feet.

111. **Comment:** Part XII. New Development, Pg. 33, Item #2a. This portion of the Permit attempts to override the General Construction Activities Stormwater Permit by requiring BAT/BCT compliance. The Clean Water Act (CWA) dictates that Municipal stormwater permits require BMP compliance to the MEP, while the GCASP permit legally requires BMP compliance with BAT/BCT. This requirement should therefore be deleted as being in noncompliance with the CWA.

Response: This language is the same as in the Orange County MS4 permit and is in compliance with the CWA. Consistent with the state storm water General Permits for industrial and construction activities, onsite or watershed-based structural BMPs included in the permittees' WQMP should reduce pollutants in storm water discharges to the BAT and BCT levels and any more stringent controls necessary to meet water quality standards.

112. **Comment:** Part XII. New Development, Pg. 33, Item #2b. To provide clarification, this statement should read "direct" discharge.

Response: This statement refers to all discharges of a listed pollutant to an impaired water body on the 303(d) list, not just direct discharges.

113. **Comment:** Part XII. New Development, Pg. 33, Item #3. The implementation of regional and/or watershed management programs is the most effective means of dealing with our storm water runoff water quality concerns. Regional solutions offer the following advantages over the site-by-site approach: 1) teamwork "buy in", 2) potential for grants to fund capital costs, 3) economies-of-scale which provide opportunity to cost-effectively address pollutants of concern, 4) ability to establish maintenance districts and 5) large-scale solutions which can be planned and modified to address future regulations (i.e., TMDLs). For these reasons, it is imperative that this Permit provide every opportunity for the regional solutions to be developed and submitted to the executive officer for approval. The San Bernardino municipalities have not even begun regional treatment solution discussions. These discussions take a tremendous amount of time due to the potential conflicts that need to be worked out. These conflicts include establishing stakeholder involvement, locating regional solutions, securing land rights (if necessary), designing regional facilities and providing funding mechanisms for both capital and ongoing maintenance costs, etc. As such, we request that the second line of this paragraph be changed to the following: "The permittees shall submit a revised WQMP to the Executive Officer by October 1, 2004. This revised WQMP shall meet the goals proposed in Section XII.B.2, above, and provide an equivalent or superior degree of treatment as the sized criteria outlined below."

Response: The timeframe will be adjusted to be consistent with the lead-time included in the MS4 permit for Orange County. The current language in the draft permit provides

flexibility to the permittees for regional treatment systems or to use the specified numeric sizing criteria, while the proposed language provides only one option.

114. **Comment:** Part XII. New Development, Pg. 33, Item #3. We object to the assumption that "structural BMPs" will be necessary in all cases to address water quality issues. Other non-structural BMPs may be sufficient to meet water quality needs. We request the removal of the word structural from this requirement. We also request that new development and redevelopment be clarified as it was in the Orange County Permit. A footer was included with the Orange County Permit that reads: "Where new development is defined as projects for which tentative tract or parcel map approval was not received by July 1, 2003 and new redevelopment is defined as projects for which all necessary permits were not issued by July 1, 2003. New development does not include projects receiving map approvals after July 1, 2003 that are proceeding under a common scheme of development that was the subject of a tentative tract or parcel map approval that occurred prior to July 1, 2003." The July 1, 2003 date should obviously be extended for the San Bernardino Permit, since this Permit will be adopted several months after the Orange County Permit. We suggest changing the date to December 31, 2003.

Response: A footnote has been added for clarification. See comment above on the date change.

E. COMMENTS FROM MANATT/PHELPS/PHILLIPS – DATED FEBRUARY 7, 2002

115. **Comments:** As written, the Permit continues to define the maximum extent practicable ("MEP") standard as the maximum extent "possible." At the January 23, 2002 public workshop on the Permit, the Santa Ana Board agreed on the record to modify this definition so that it will now be defined as the maximum extent "feasible." The Santa Ana Board also agreed to ensure that the definition of MEP is limited to that which is technologically and fiscally feasible, thus making this Permit consistent with the MEP definition found in the Santa Ana Board's North Orange County Permit.

Response: The MEP definition has been changed to "maximum extent feasible" to be consistent with the Orange County Permit.

116. **Comments: a)** Under the MEP standard, the Santa Ana Board must take into account societal, economic and technological considerations. It is clear from the content of the Permit that the Santa Ana Board has not fully considered these factors. To meet the MEP standard, the Santa Ana Board must demonstrate that the permit requirements can actually be accomplished before requiring certain standards in the permit. b) Further, the Santa Ana Board must also demonstrate that the permit's requirements are economically feasible. It must consider how requiring strict compliance will affect particular local and regional needs, including affordable housing, attracting and retaining local businesses, and encouraging re-development of urban areas. c) Finally, it is important that the Santa

Board consider how the permit's prohibitions will affect local government's ability to effectively manage local land use and planning.

Response: a) There are many issues that require consideration in formulating and implementing regulations. Commonly, collective terms such as societal, economic, and technological considerations are used for those issues that are not the major focus of the regulation. In our evaluation of the BMPs in the WQMPs to be submitted by the permitees, factors such as those above will be considered with respect to water quality effects. b) Neither the Water Code nor federal regulations compel reliance on any particular form of economic analysis in the implementation of requirements based on the MEP performance standard; the admonition quoted from 64 Fed. Reg. 68722 & 68732 calls for flexible interpretation of MEP based on site-specific characteristics and "cost considerations as well as water quality effects…" Thus, while the regional board is advised to consider costs as a factor in determining the reasonableness or practicability of requirements, there is no state or federal mandate for a more formal analysis. c) The permittees are required under CEQA to consider environmental issues in their land use decisions. The permit simply provides guidance on how water quality issues are to be addressed on CEQA reviews and land use planning.

117. **Comments:** The Coalition is concerned that the Permit as written improperly infringes on local governments' land use and planning authority in direct contradiction of federal and state law. Under federal and state law, local land use and planning issues are left to the sound discretion of the local authorities. This is because these local governments are knowledgeable and sensitive to the particular needs of their unique area and population.

By imposing mandatory requirements on the permitting and approval of new development and redevelopment projects, the Santa Ana Board improperly infringes on local governments' land use and planning authority.

Response: The permittees are required under CEQA to consider environmental issues in their land use decisions. The permit simply provides guidance on how water quality issues are to be addressed on CEQA reviews and land use planning as well as how they may comply with environmental requirements in the exercise of their land use authority. This in no way infringes upon the local land use authority.

118. **Comments:** These mandatory requirements will make the development of new projects in San Bernardino County much more expensive. It is possible that many redevelopment projects will be too cost prohibitive under the Permit thereby inhibiting the economic growth of the region. Instead of containing mandatory requirements, the Permit should simply provide guidance to permittees as they approve and permit development projects. The Coalition requests that the Santa Ana Board revise these requirements so that they are made consistent with state and federal law.

Response: SUSMP-type requirements for new development and significant redevelopment have been deemed as MEP by the State Board and are consistent with state and federal laws (See State Board Order WQ 2000-11). These requirements are consistently being included in the MS4 permits issued throughout the State. Therefore, the inference that new projects in San Bernardino County would be more expensive than in other parts of the State due the requirements proposed in this permit is not valid.

119. **Comments:** The Coalition agrees with the concerns raised at the January 23, 2002 public workshop by the Building Industry Association of Southern California ("BIASC") concerning the impacts of the SUSMP on residential projects. The Coalition strongly urges that the Santa Ana Board work with the BIASC and others to address these concerns before issuing a final Permit.

Response: Please refer to our response to BIASC's comments.

120. **Comments:** Although the Permit acknowledges regional/watershed solutions, we are still heavily concerned that it does not go far enough in promoting this approach. Specifically, it does not provide ample opportunity nor time for these regional/watershed solutions to be developed and submitted to the executive officer for approval. The San Bernardino municipalities and stakeholders have not even begun the process for determining regional solutions, while Orange County municipalities and stakeholders have not only begun the process, but have made great strides toward achieving this goal. This process can be very time consuming due to the many factors requiring resolution. These include stakeholders involvement, locating regional solutions, securing land rights (if necessary), designing regional facilities, and providing funding mechanisms for both capital and ongoing maintenance costs. Therefore, we request that the wording pertaining to regional and/or watershed management programs on page 33 be revised to read as follows: "The Permittees shall submit a revised WQMP to the Executive Officer by October 1, 2004. This revised WQMP shall meet the goals proposed in Section XII>B.2, above, and provide an equivalent or superior degree of treatment as the sized criteria outlined below."

Response: The first draft of this permit was released in August of 2001 that included the new development requirements. The permittees were aware of the SUSMP requirements developed by the Los Angeles Regional Board and the directive from the State Board to consider SUSMPs as MEP for purposes of drafting MS4 permits. During the workshops for the Orange County MS4 permit, the Regional Board made it very clear that the three MS4 permits in the Region should have similar requirements for new developments. Thus, the permittees were fully aware of these requirements. Not having a regional solution by the date that the SUSMP-type requirements go into effect does not necessarily preclude project proponents from coordinating and implementing a regional solution at a later time. The San Bernardino County Permittees will have the same lead-time as the Orange County permittees.

F. COMMENTS FROM NRDC DATED FEBRUARY 8, 2002

121. **Comment:** Compliance Assurance. The Regional Board's enforcement and audit program for municipal entities has been virtually non-existent during the last ten years. This violates the terms of the State's agreement with the USEPA allowing the Regional Board to implement this NPDES permit program – and is also a violation of the Clean Water Act. While recent budget augmentations have improved Regional Board capacity in this regard, it is unclear whether the Regional Board can meet its own minimum inspection and audit requirements: a minimum of one annual inspection and audit of each municipal entity during each year of the term of the new Permit. Does the Board intend to meet these requirements and, if so, how will it do so?

Response: The five-year workplan established a framework and setup goals and objectives for the State's storm water program. The goals and objectives were predicated upon full funding to implement this program. One of the program goals was to evaluate the municipal program annually through offsite and onsite audits. During the last eleven years, even with the limited resources allocated for the storm water program, we conducted both offsite and onsite audits and have taken a number of enforcement actions against municipalities for violations of the MS4 permits. A recent audit of the Regional Board's NPDES program by US EPA (p. 16-17) states, "RB8 conducts annual compliance inspections of their MS4 permittees" and on page 25 it states, "RB8 has developed a protocol for in-depth audits for the MS4 permittees". Therefore, NRDC's assumptions are not based on facts. Last year, the storm water program budget has been augmented. A review of our files will indicate that frequency of our municipal program audits and our enforcement activities have significantly increased with the budget augmentation." The Board intends to optimize use of its resources to meet or exceed its work plan commitments.

122. **Comment:** Draft Permit. Overall, we are very concerned that the draft is far too general. Compared to the L.A. Municipal Storm Water Permit, for example, the draft Permit is nearly half as short. In many respects, the Draft Permit should be modified so that it, at bare minimum, comports with the L.A. Permit.

Response: At the request of the Regional Board, a comparison matrix was prepared to compare the major components of the three recent MS4 permits from Southern California Regions (San Diego Region's south Orange County permit, Santa Ana Region's north Orange County permit and the Los Angeles Region's Los Angeles permit). The matrix only compared the major components; it was not a word-by-word comparison of the permits. The north Orange County permit is similar to the San Bernardino County draft permit. Therefore, this comparison matrix is applicable to the San Bernardino County draft permit. This matrix indicates that the core requirements of the three permits are very similar. Implementation of the NPDES municipal storm water requirements allows

for differences from location to location. Although the storm water issues are similar across the board, the magnitude of the existing problem/sources in San Bernardino County is different than L.A. Hence, this permit specifies detailed performance standards in critical areas but it also provides flexibility to the permittees to propose programs and policies that may be regional or site-specific.

123. **Comment:** TMDLs. The Clean Water Act and Porter-Cologne Act require that waste load allocations be included in TMDLs. Hence, it is essential that waste load allocations for each permittee be included in the permit for each of the TMDLs that has been adopted by the Regional Board. Therefore, the following language must be added to the Draft Permit: "The Permittees shall revise their Municipal Storm Water Management Program (MSWMP), at the direction of the Regional Board Executive Officer, to incorporate program implementation amendments so as to comply with regional, watershed specific requirements, and/or waste load allocations developed and approved pursuant to the process for the designation and implementation of Total Maximum Daily Loads (TMDLs) for impaired water bodies."

Response: Section XIX.2.d of the permit specifies re-opener provisions. The permit will be modified or reissued to include implementation of the TMDL requirements developed prior to permit expiration.

124. **Comment:** Anticipated Improvement in Water Quality. The Fact Sheet states that "[I]t is anticipated that…the goals and objectives of the storm water regulations will be met, including protection of the beneficial uses of all receiving waters." Fact Sheet at 13. Unfortunately, we could not find any evidence to support this expectation in the Draft Permit; indeed, the Fact Sheet notes that water quality improvements have not been detected. *Id.*

Response: The annual reports including monitoring reports submitted by the permittees for the last decade identified the amount of waste/debris collected from street sweeping, composition of storm drain clean outs, spills responded to, illegal discharge complaints investigated (and possibly deterred from happening again), construction/industrial, and commercial facilities inspected, etc. Such programs have clear or intuitive water quality benefits and will continue to do so with the additional requirements specified in the permit. Uncertainties in quantifying the water quality benefits from these programs have been a challenge due to the factors mentioned in this section of the Fact Sheet. See also comment 127 below.

125. **Comment:** Pollution in Storm Water. Local studies in Southern California have established that urban runoff has very serious impacts in rivers, streams, and the ocean. The L. A. County Municipal Storm Water Permit provides multiple references to studies and data regarding storm water impacts, and this information should be covered in the

draft Permit, as well. We suggest revising the findings of the Permit to more completely reflect the known impacts of polluted runoff on receiving waters.

Response: We agree that there are a lot of publications on the impact of urban runoff on receiving water quality. A number of these studies are referenced in the Fact Sheet and the findings. We agree that it is not an exhaustive list; additional references is not going to strengthen the permit.

126. **Comment:** Discussion of Monitoring Results. The Draft Permit lacks any meaningful discussion of monitoring results obtained under the previous two permit terms. The Draft Permit should be revised to discuss particular pollutants of concern as identified in current monitoring efforts by the permittees.

Response: Additional discussion is included regarding the monitoring results. The Fact Sheet also identifies the monitoring site locations and land use categories. The ROWD and the annual reports include a discussion on pollutants of concern.

127. **Comment:** Lack of Anti-degradation Analysis. The Draft Permit does not include an anti-degradation analysis, contrary to legal requirements. The stated basis for excluding such analysis is that the Permit will improve water quality and that the storm water discharges are consistent with state and federal anti-degradation requirements. This is far from clear……The Board's present finding that "loading rates" will be reduced is devoid of support and cannot stand on its own; in addition, the corollary finding that, therefore, the quality of receiving waters will improve does not follow necessarily. As per SWRCB Order No. 90-5, anti-degradation analysis is required.

Response: The storm water monitoring results for San Bernardino County for the last ten years indicate no degradation of water quality resulting from discharges regulated under this permit. The proposed Permit includes additional requirements to control the discharge of pollutants. Based on available evidence and additional requirements specified in this Permit, there is no reason to believe that water quality degradation will take place upon implementation of the provisions of the proposed Permit and other programs (MSWMP, monitoring program) and policies and programs of the San Bernardino County storm water program. NRDC's assertion that WQ 90-5 is applicable to this Permit is invalid because, unlike the permits discussed in WQ 90-5, this Permit does not allow the discharge of toxic pollutants in greater quantity than had been allowed in previous permits. Therefore, no further anti-degradation analysis is necessary.

128. **Comment:** Deferral of Compliance. In many respects, the Draft Permit would delay compliance with many provisions for a period of one to three years……This approach does not assure that an adequate storm water program will be implemented concurrent with the issuance of the permit itself. Given that this is the third iteration of the

municipal permit, there is simply no justification for such extraordinary delays, especially as applied to the most basic storm water control actions. This deferral is in violation of 40 CFR 122.47 and 124(i).

Response: The requirements specified in the 1990 and 1996 Pemits have been met. The Permittees have programs in place to address illegal discharges/illicit connections. The adequacy of Permittees' legal authority need to be periodically reviewed and updated, hence this continues to be a permit requirement. There are time schedules included in the Permit for further improvements to the existing programs in consideration of the fact that the municipalities need to obtain additional funding through a budget process. Sections 122.47 and 124(i) apply to the issuance of permits to "new sources". As recognized by the State Board, the issuance of a MS4 permit to a municipality does not constitute an issuance to a "new source".

129. **Comment:** Finding Regarding Violation of Water Quality Standards. There is no evidence in the record to support the claim in Finding 38 that the nature of storm water discharges requires any additional time to determine whether these discharges are causing or contributing to violations of water quality standards. Storm water controls have been in place for a decade and monitoring data and other public documents demonstrate the storm water discharges, at a minimum, are contributing to water quality objective violations. There is also no evidence to demonstrate that the "iterative" process described to assess the contribution of storm water to these violations has been implemented or that any additional BMPs have been designed or implemented to correct violations.

Response: This finding refers to the receiving water limitations. Having storm water programs/ordinances in place do not guarantee compliance from all potential dischargers nor prevent accidental spills. Pollutant flows into the storm water conveyances are neither homogeneous nor static. Existing sampling/monitoring programs are neither conducted continuously nor in real time. There is a delay in the feedback to the permittees and the Regional Board staff as to concentration levels, source identification, and to determine if there is a BMP failure or lack of BMP implementation. The "iterative" process outlined is appropriate and the language is consistent with the language approved by the US EPA, the State Board, and is consistent with other MS4 permits.

130. **Comment:** Finding Regarding Failure to Include Numeric Effluent Limits. There is no evidence to support the claim in Finding 41 that numeric effluent limits are not appropriate because the "impact of the storm water discharges on the water quality of the receiving waters has not yet been fully determined." As noted: (1) monitoring has been conducted for more than ten years; (2) there is evidence connecting storm water runoff to receiving water limitations in the region; (3) the section 303(d) List notes that runoff contributes to the impairment of many receiving waters as does the Permit itself; and (4) federal regulations required that the permittees provide in 1990 specific information on annual pollutant loads and event mean concentrations for pollutants. For all these

reasons, significant evidence exists to prove that storm water has the reasonable potential to cause or contribute to the violation of applicable water quality standards. Accordingly, numeric effluent limits are mandatory under 40 CFR Section 122.44. The Regional Board must make this finding and, further, must among other things conduct a reasonable potential analysis and thereafter insert numeric effluent limits in the Permit.

Response: The issue of numeric effluent limits in MS4 permits has been appealed and decided by the State Board and the courts. Both the State Board (Memorandum from Craig Wilson to Ed ward C. Anton dated 03/15/01) and the Ninth Circuit Court of Appeals (9th Cir. 1999, 191 F.3d 1159) have determined that numeric effluent limits are not required in MS4 permits.

131. **Comment:** Findings Characterizing the Permittees' "State-of-Mind." (Finding 48 stating that "the permittees recognize the importance of watershed management…) There is no basis for the Board to characterize the belief of "state-of-mind" of any permittee. The Board has no evidence to support such findings; thus they are not appropriate.

Response: The permittees from San Bernardino, Riverside, and Orange Counties have and continue to support and cooperate with regional monitoring efforts such as the regional monitoring programs conducted with SCCWRP. The San Bernardino County permittees have stated in the ROWD their intent to consider options to work with Riverside and Orange counties in other regional water quality monitoring efforts.

132. **Comment:** Permit Section I, Responsibilities of the Principal Permittee. Unlike the recently adopted Orange County Permit and the requirements in Section II of this permit applying to "Responsibilities of the Co-Permittees," this section is missing a provision requiring the principal permittee to "Pursue enforcement actions as necessary within its jurisdiction to ensure compliance with storm water management programs, ordinances and implementation plans including physical elimination of undocumented connections and illegal discharges." Why is this provision omitted for the Principal Permittee, the County? As there appears to be no reason for this omission, this language should be added into Section I.

Response: The recommended language has been added into Section I.

133. **Comment:** Permit Section III, Discharge Limitations/Prohibitions, Paragraph 3. The Board cannot delegate authority to the Executive Officer to modify the Permit. Water Code Section 13223. This paragraph violates this provision because it allows staff to modify the terms of the Permit with reference to a basic element, discharge exemptions. Because only the Regional Board can modify a permit, this reference should be stricken.

Response: This language has been changed.

134. **Comment:** Permit Section III, Paragraph 6. This section fails to comport with the Clean Water Act requirement to prohibit the discharge of non-storm water discharges into storm sewers. 33 U.S.C. Section 1342(p)(3)(B)(ii). This section inserts a "practicability" exemption that is unlawful. Note that the prohibition of non-storm water discharges is contained in a separate statutory subparagraph from the requirement to reduce the discharge for pollutants in storm water to the maximum extent practicable.

Response: The requirement is for the discharge of pollutants and therefore, the practicability standard applies.

135. **Comment:** Permit Section V, Receiving Water Limits. As discussed further in Section III of these comments, there is no basis for the Board to provide that compliance with receiving water limitations can be maintained by implementing the ROWD because there is no evidence that the ROWD is designed to assure compliance with those limits. References to the ROWD should be stricken and the permittees should be directed to achieve compliance by implementing a storm water management program that is designed to assure discharges from the MS4s do not cause or contribute to a violation of water quality standards and also meet the MEP standard. 40 CFR Section 122.44. In this regard, we suggest adding the following language to paragraph 3 of Section IV (Receiving Water Limitations), taken from the Orange County Permit: "The ROWD and its components shall be designed to achieve compliance with receiving water limitations. It is expected that compliance with receiving water limitations will be achieved through an iterative process and the application of increasingly more effective BMPs."

Response: Where appropriate in this section, references to the ROWD was replaced with MSWMP and its components. However, reference to the ROWD in IV.3 was inadvertently left unchanged. This will be corrected in the revised Order. Recommended language has been added into Section V, Paragraph 3.

136. **Comment:** Permit Section VI, Legal Authority. Paragraph 1 states that "permittees shall maintain and enforce adequate legal authority to control contribution of pollutants to the MS4 by storm water discharges…." There is no reason to limit this provision by the clause "by storm water discharges." Rather, the paragraph should read: "permittees shall maintain and enforce adequate legal authority to control contributions of pollutants to the MS4."

Response: The clause "by storm water discharges" has been deleted from Section VI, Paragraph 1.

137. **Comment:** Permit Section VII, Illegal and Illicit Discharges. The draft Permit does not contain any overarching performance standard directing specific, affirmative actions to eliminate illegal and illicit connections. Instead, the draft Permit requires the permittees only to continue to prohibit these connections and activities "through their ordinances,

inspections, and monitoring programs;" Draft Permit at 21; and specifies a time frame in which investigation and remedial action must occur once a problem activity or connection is discovered. However, the draft Permit does not contain any express schedule of targeted actions, such as inspections. Also, the draft Permit does not contain any program to catalogue (and Update on an ongoing basis) both permitted and non-permitted connections to the MS4 system, a step that is a predicate to effective management of the system and interdiction of illicit and illegal activities. By contrast the L.A. Permit requires permittees to "eliminate all illicit and illegal discharges…." L. A. Permit at 51-53. Further, that permit sets forth a specific schedule of inspections and also requires that a full database be maintained that identifies all permitted and un-permitted connections to the storm drain system. *Id.* The San Diego Permit similarly contains affirmative requirements to "actively seek and eliminate illicit discharges and connections" and "eliminate all detected illicit discharges….immediately." San Diego County Permit at 36 [Section F.5]. The draft Permit should be revised to contain requirements consistent with these other third round MS4 permits in the region.

Response: The permittees have completed a comprehensive reconnaisance survey of their storm drain systems for illicit connections and have taken corrective measures for those found. Their current proposal is to focus on locating and preventing or correcting illicit connections as part of their plan check and building inspection process. The permit requires to correct any newly discovered illicit connections within 60 days. Record keeping and reporting requirements have been added to Section VII, Paragraph 1.

138. **Comment:** Permit Section XII, New Development. This section of the Permit is inconsistent with the MEP standard because it fails to include a program requiring the installation of structural best management practices as required by the SWRCB Order WQ 2000-11 ("Order"). This section of the Permit is illegal and contrary to the express direction of the Chief Counsel of the State Board who expressly notified all Regional Board Executive Officers that: "Municipal storm water permits must be consistent with the principles set forth in the Order. The Order finds that the provisions of the SUSMPs, as revised in the Order, constitute MEP." ….. Accordingly, the Permit must require that a SUSMP program equivalent or more stringent than that approved of by the State Board be implemented immediately by the permittees. In this connection, there is no inconsistency between the SUSMP and regional approaches to storm water pollution mitigation.

Response: As with the other MS4 permits adopted, the SUSMP type requirements in this permit has provided for a phase-in period to allow the permittees to develop a regional approach or to modify their existing procedures to implement the structural controls required by the permit. In the interim, the permittees will implement their proposed current new development program that also requires implementation of structural and non-structural controls. The time schedules for SUSMP-like requirements is consistent with other MS4 permits.

139. **Comment:** Draft Permit at 31-32. Retail gasoline outlets are conspicuous for their absence from this list; is there any reason that these facilities should not be included?

Response: See response to City of Ontario's comment 87 above. See also response to Comment 175 on the Orange County permit.

140. **Comment:** Paragraph B-2(a) states that "pollutants in post-development runoff shall be reduced using controls that utilize the best available technology (BAT) and best conventional technology (BCT). The latter clause impermissibly weakens this provision, which must read: "pollutants in post-development run-off shall be reduced to the MEP."

Response: This language mirrors the Orange County permit. Consistent with the state storm water General Permit, onsite or watershed-based structural BMPs specified in the permittees' WQMP should reduce pollutants in storm water discharges to the BAT and BCT levels and any more stringent controls necessary to meet water quality standards.

141. **Comment:** Permit Section XIII, Public Education and Outreach. This section of the Permit is also inadequate. Its principal provision requires only that the program "target 100% of the residents "over the five-year term of the Permit. However, effective public education program must make multiple and repeated impressions in order to be effective. While we strongly support the requirement in the draft Permit to require that 5 million required impressions actually measurably increase the knowledge and change the behavior of the targeted groups, the limited program described in the Permit is not enough to meet MEP. For example, the proposed L.A. Permit requires, among other things, 35 million annual impressions; education of 50% of all school children every two years; and the targeting of all retail gasoline and restaurant chains once every two years. LA County Permit at 25-27. The requirements of the public outreach and education program must, at a minimum, be equal to the conditions of other equivalent permits, such as the L.A. County Permit. No evidence is presented to demonstrate that the program required by the draft Permit meets the MEP standard, especially in light of evidence that the program is significantly less comprehensive than programs in the region being implemented by comparable entities.

Response: See response to Comment 112 on the Orange County MS4. Re: annual impressions per capita. The ROWD specifies an educational component targeting all of the Phase 1 facilities, automotive repair facilities and food service facilities for educational outreach and or inspection. Section 7 of the ROWD specifies various opportunities for education outreach including offering storm water presentation to 100 percent of 4^{th} or 5^{th} grade classrooms , and conducting a minimum 75% of those that accept, in combination with public participation program to involve and as source of potential assistance in the outreach effort elementary, junior high, high school student – as class projects, Boy Scout/Girl Scout troops, merit badge programs, eagle scout

projects, Boys and Girls Clubs, programs for troubled youths, and environmental organizations.

142. **Comment:** Permit Section XIV, Municipal Facilities & Inspections. The catch basin cleaning requirement of the Permit (80% per year) is inadequate. For many years, L. A. County and many other entities have cleaned 100% of the catch basins annually, prior to the rainy season. There is no evidence that the proposed 80% requirement meets the MEP standard. In addition, each permittee should be required to undertake a specific and detailed inspection of USEPA Phase I industrial facilities, automotive facilities and restaurants, as required by federal regulations. 40 CFR Sections 122.26(d)(iv)(A)(5) and (B)(1). The L.A. County Permit contains such provisions and should be used as an example. L. A. County Permit at 28-32.

Response: The draft permit specifies 100 % inspection requirement of open channels and catch basins and clean out of those that are more than 25% full of sediment/debris. We feel that this requirement is at least as effective as the LA County program as it will likely lead to repeat inspections and clean out of those areas that are generally more problematic. Section 3 of the ROWD discusses how the permittees will target General Industrial Permit (phase I) facilities, automotive facilities and food service facilities for educational outreach and/or inspection.

143. **Comment:** Permit Section XVIII, "Provisions." Paragraph 1, which provides that the permittees can demonstrate compliance with discharge limitations and receiving water standards by complying with the ROWD, is unlawful. Draft Permit at 38. There is no evidence that the ROWD is consistent with the MEP standard nor is there evidence that it has been designed to meet water quality standards. By contrast, other jurisdictions, such as the L.A. RWQCB, have established that a submitted storm water management plan is a minima and that, further, each permittee must assure that the plan complies with the program requirements set forth in 40 CFR 122.26 (d)(2) and, thereafter, implement the adequate plan in a manner consistent with the MEP. Accordingly, we suggest that the Board add the following language to the provisions of the Permit: "In addition to those specific controls and actions required by the terms of this Order and the ROWD, each permittee shall implement controls as are necessary to reduce the discharge of pollutants in storm water to the maximum extent practicable and so as to satisfy the other requirements of this Order."

Response: Recommended language has been added into Section XVIII, Paragraph 4.

144. **Comment:** Monitoring and Reporting Program No. 01-16. The permit's monitoring and reporting program is woefully inadequate. First, there is no showing that the program meets the MEP standard. Second, the monitoring requirements do not even appear to be set out in the program. Instead, the permittees are to submit a program for approval by

the Executive Officer at a later time. This is inappropriate. For instance, how is it justifiable to allow the permittees to determine the parameters selected for field screening and the number of monitoring stations and number of samples required. The Permit should set out at least a minimum monitoring program to apply to the entire county. Moreover, this program should be similar to and consistent with other monitoring programs under the other municipal storm water permits in the area…..At a minimum, the Board should include a program that includes all elements included by the Los Angeles RWQCB in its Monitoring and Reporting Programs for Los Angeles and Ventura Counties, which are good examples of more extensive and structured monitoring programs.

Response: We disagree that submittal of a program at a later time is inappropriate. The permittees have conducted a monitoring program for the last 10 years. It is appropriate to evaluate the data obtained from the program, other regional programs, ongoing TMDL efforts and re-evaluate the monitoring program. Development of an integrated monitoring program will maximize the funds and efforts invested. Coordinated effort will require time. The monitoring objectives specified in the monitoring and reporting program will dictate the number of monitoring stations, number/type of samples, location, etc. Language will be added to include a date by which the EO has to approve a monitoring program otherwise, the permittees will be required to conduct a monitoring program specified by the EO.

145. **Comment:** Municipal Facilities and Activities. With respect to requirements such as drain inlet cleaning, the frequencies required in the draft Permit pale in comparison to comparable jurisdictions. By contrast, the L.A. County Permit contains a substantially more detailed set of requirements, including SWPPPs for maintenance bases; baseline structural control requirements for maintenance bases; prioritized schedules for drain inlet cleaning (requiring some drains to be cleaned as frequently as monthly during the rainy season and all drains at least annually); updated stenciling on catch basins within 180 days of inspection; specified (as frequently as bimonthly) street sweeping; and municipal parking lot cleaning protocols. In contrast, the draft Permit contains very few detailed requirements. Instead, it provides extensive time schedules for the permittees to develop better plans for maintenance of municipal facilities. Again, this is a third round permit and should have already been dealt with in the ROWD. The Board should revise the Permit to include specific requirements and priorities, as well as specific schedules for storm drain cleaning, and ensure that these requirements will be complied with immediately, not 3 or 4 years from now.

Response: Drain cleaning has been addressed in comment number 142 above. Section 5 of the ROWD proposes development and implementation of site-specific pollution prevention plans for corporation yards and other municipal outdoor materials storage areas. In their December 11, 2000 letter responding to our comment on the ROWD, the permittees proposed to sweep streets/roads in residential zones at least twice each permit

year, with at least one sweeping during the pre-rainy season months of September to October. Commercial, industrial, and institutional zones, and along designated truck routes, will be swept at least once each quarter. We feel that this combination of BMPs, given prior data is a good starting point for this third term permit.

146. **Comment:** The Storm Water Management Program, as Described in the Report of Waste Discharge is Inadequate. There is no evidence that the Storm Water Management Program contained in the Report of Waste Discharge ("ROWD") for San Bernardino County has been designed to meet the MEP standard…..Similarly, there is no evidence that the ROWD has been designed to achieve water quality objectives and to assure that regulated discharges do not cause or contribute to a violation of those objectives…. In sum, the ROWD describes a program that would be inadequate even if it were a second-generation effort instead of a third generation permit approach. There is no justification for San Bernardino County to be so far behind the rest of southern California…..At a minimum, the provisions of the Draft Permit must be clarified to state that the ROWD constitutes a baseline program, but not one that comports with MEP or the requirement that discharges not cause or contribute to an exceedance of water quality standards. As such, in addition to adding the suggested language to Section XVIII (Provisions) of the Permit, the Board should delete all references to the DAMP as approved or as adequate for meeting the requirements of section 402(p) of the Clean Water Act.

Response: Changes have been made to incorporate the suggested language.

III. COMMENTS ON THE FOURTH DRAFT (FEBRUARY 13, 2002)

A. NRDC Comments – Dated February 25, 2002

TMDL Implementation:

147. **Comment:** TMDLs must be implemented by inclusion of WLAs in NPDES permits for point sources. See 40 CFR Section 122.44(d)(1)(vii)(B); see also comments dated February 8, 2002. However, in stark contrast to all of the other municipal storm water permits in southern California, including most notably the Orange County permit issued by this Board in January, the Draft Permit lacks the appropriate language to address TMDLs….It is not sufficient to assume that the stakeholders will cooperate in implementing the TMDLs..

Please delete the following language from Finding 18 on pages 6-7 of the Draft Permit: "It is expected that once the TMDLs and an implementation plan are developed, the stakeholders will cooperate and implement the plan. To avoid any duplicative efforts, this permit does not include any further requirements based on TMDLs. However, this

permit may be reopened to include TMDL implementation, if other implementation methodologies are not effective."

Response: Please see the revised language.

148. **Comment:** Further, in addition to the deletion of the above language from the findings, a new provision must be added to the Draft Permit, similar to an identical provision in the Orange County Permit, to provide for TMDL implementation through the Permit: "The Permittes shall revise their Municipal Storm Water Management Program (MSWMP), at the direction of the Regional Board Executive Officer, to incorporate program implementation amendments so as to comply with regional, watershed specific requirements, and/or waste load allocations developed and approved pursuant to the process for the designation and implementation of Total Maximum Daily Loads (TMDLs) for impaired water bodies.

Response: Similar language added to Section XVI.3 , Program Management.

SUSMP Requirements (Section XII.B)

149. **Comment:** Applicability Cutoff: Concern about footnote 5 on page 33 of the Draft Permit opens up a huge loophole in the program and also will most likely cause a race for tract map approval before December 1, 2003 to avoid SUSMP requirements. The tract map approval step generally is not sufficiently "close to" the beginning of actual construction of the project. Rather, tract map approval is a very early step in a development project. As a result, thousands of potentially covered projects will be built without the water quality protection offered by the SUSMP provisions. A much more relevant point in the development process to insert this type of cutoff would be the issuance of building or grading permits which occur much closer to the time when construction actually begins on a project. See e.g., San Diego Municipal Storm Water Permit. Revise footnote 5 to refer to the date of issuance of building or grading permits as the cutoff, rather than tract map approval.

Response: We feel that the cut-off date as the date of approval of tentative tract/parcel map is advantageous. This provides an opportunity for the municipalities to require treatment or infiltration devices and long-term operation and maintenance responsibilities included as part of the local conditions for project approval. Similar cut-off dates were included in our Construction Permit for San Jacinto Watershed and the Orange County MS4 permit. Based on our experience with these permits, it does not appear that such a cut-off date will create any sudden rush to get developments approved.

150. **Comment: Definition of Significant Re-Development:** The definition of "significant re-development" contains a potential major loophole. The proposed definition includes the "addition" of 5,000 or more square feet of impervious surface on an already

developed site. Arguably, this definition is intended to include the replacement of impervious surfaces on the site. However, for clarity, the definition should be revised to state that this includes "the addition *or replacement* of 5,000 or more square feet of impervious surface…" This revised definition fully captures what is meant by "redevelopment" and is consistent with the State Board's ruling on new and redevelopment standards. See SWRCB Order 2000-11.

Response: The current language is consistent with State Board Order No. 2000-11. It states that the redevelopment projects should be subject to the SUSMPs only if they result in creation or addition of 5,000 square feet of impervious surfaces (Order No. 2000-11, III.7). However, the draft permit has been revised to include the clarifications included as amendments to SUSMPs in that Order.

151. **Comment:** Discharges to Impaired Waters: The Permit should contain a requirement that "pollutants in post-development runoff shall not be discharged to impaired waters at levels that exceed pre-development levels."…The current language in the permit, however, states that a "discharge of any listed pollutant to an impaired waterbody on the 303(d) list shall not cause an exceedance of receiving water quality objectives." Draft Permit at 33 (Sec. XII.B.2.b). This should be replaced with the suggested language above or at the bare minimum, be revised to say "cause or contribute," rather than just "cause" to be consistent with the Clean Water Act and its implementing regulations.

Response: Please see the changes to Section XII.B.2.b. Other suggested changes are not consistent with State Board Order No. WQ 2001-06.

152. **Comment**: Finding Number 38: The current language of Finding 38 is inconsistent with the Clean Water Act. The language of the second sentence currently reads "the permit includes a procedure for determining whether storm water discharges are causing exceedances of receiving water limitations…" This language should be revised to say "causing or contributing to exceedances of receiving water limitations…" This revision is necessary for consistency with the Receiving Water Limitations section of the Draft Permit (Section IV) as well as for consistency with the Clean Water Act.

Response: This finding has been changed.

153. **Comment:** Section XIII, Public Education and Outreach: While we support the addition of paragraph 6 in section XIII of the Draft Permit, which requires permittees to determine the best mechanisms for providing educational materials to business, the Board should also set forth a timeframe to ensure that the mechanisms, once determined, are utilized. In other words, the permit should contain an additional sentence that sets forth a deadline for using these mechanisms to provide the materials to businesses within the Permit term.

Response: A time schedule for implementation has been added.

154. **Comment:** Section VII, Litter, Debris and Trash Control: The Draft Permit currently encourages permittees to characterize trash, determine its main sources and develop and implement BMPs to control trash in urban runoff. Draft Permit at 22. This is a very weak provision that is unlikely to result in any headway on the problem of trash in our waterways. Why not require the permittees to take these additional steps along with reviewing their litter ordinances? At the very least , the permittees should be required to characterize the trash and determine its main sources and submit these findings to the Board. Only by making this provision a requirement will the Board be able to gather consistent data from all the permittees regarding the problem of trash in urban runoff. As this is an important problem, a requirement is justified.

Response: The draft permit now requires the permittees to characterize trash and determine the sources.

155. **Comment:** Section XV, Municipal Construction Projects/Activities: The Draft Permit appears to regulate discharges only from municipal construction projects over five acres. See draft Permit at 38. It is unclear from this language whether any conditions are applicable to construction sites between one and five acres, or whether discharges from municipal construction projects under five acres are completely prohibited. The Draft Permit should clarify this point. In addition, unless these discharges are completely prohibited, the Draft Permit should be revised to add provisions to ensure that construction activities between one and five acres are completely prohibited. The Draft Permit should clarify this point. In addition, unless these discharges are completely prohibited, the Draft Permit should be revised to add provisions to ensure that construction activities between one and five acres properly obtain coverage under a general construction permit once these requiremetns become effective for smaller construction sites on March 10, 2003. Because the Draft Permit will not expire until 2007, it is important to include these provisions in the Permit so that these activities are properly regulated after March 10, 2003. This could be accomplished by including the following language: Each permittee shall obtain coverage under a statewide construction sites for projects between one and five acres not later than March 10, 2003.

Response: The language in the draft permit has been revised to include construction activities on one to five acres.

B. RESPONSE TO COMMENTS FROM THE CITY OF ONTARIO, DATED MARCH 12, 2002

156. **Comment:** Section VII - Item 2 is inconsistent with reporting requirements in Section VIII - Item 5, Section IX - Item 8, and Section X - Item 8. Request that the same wording for 24 hour verbal notification to the Regional Board be used as is written in

Section VII - Item 2, for all sites, and that all written reports be required to be submitted within 10 days for all sites (instead of 10 days for some and 5 days for others). Request a reason for the requirement to submit a written report within 30 days of the incident for commercial sites that do not pose a threat to human health or the environment, but not for industrial or construction sites.

Response: Deadline for written reports has been changed to 5 days. The requirement to submit a written report within 30 days for commercial sites has been deleted. The information submitted as part of the data base will be sufficient for incidences of non-compliance that do not pose an immediate threat to human health or the environment.

157. **Comment:** Section X, Item 5: Please clarify if the listed commercial businesses in the permit, Section X.1.a-j, are all considered to be high priority sites.

Response: No, the list provides types of commercial establishments that need to be inventoried. Section X.2 provides guidance on how these commercial sites are to be prioritized.

158. **Comment:** Section XII, Item A. 4: Fix typo in bold: "The permittees shall review and revise the storm water management program and implement any changes in the program, as necessary in order to require industrial/commercial site dischargers to reduce pollutants in runoff from new and existing industrial/**commercial** sites."

Response: Corrected.

159. **Comment:** Section XII, Item A. 4 (c): Fix typo in bold: "Monitoring and inspection of industrial/**commercial** sites."

Response: Corrected.

160. **Comment:** Section XII, Item 6 end of first paragraph: Fix typo in bold: **"**All actions found necessary shall be completed within one year of issuance of **thir.**"

Response: Corrected.

161. **Comment:** Section XII, Item 9: Fix typo in bold: "By September 1, 2003, the permittees shall review and, as necessary, revise their current grading/erosion control ordinances in order to reduce erosion **erosion** …"

Response: Corrected.

C. COMMENTS ON THE FEBRUARY 13, 2002 DRAFT FROM RICHARDS, WATSON, GERSHON – ATTORNEYS-AT-LAW ON BEHALF OF THE CITIES OF RANCHO CUCAMONGA AND UPLAND, DATED MARCH 15, 2002

162. **Comment:** The Draft Permit has been developed without compliance with California's Administrative Procedure Act. The Regional Board and the State Board attempt to achieve statewide consistency with respect to municipal stormwater permits and thus trigger the rulemaking process.

Response: The comment asserts that the issuance of the MS4 permit constitutes a "regulation" and is subject to the processes set forth in the Administrative Procedures Act (Govt. Code, § 11340, et seq.). This is not the case. In adopting the Administrative Procedures Act (APA), the Legislature specifically exempted the adoption of permits by the State Board and regional boards. Government Code section 11352 states very plainly: "The following actions are not subject to this chapter: … (b) issuance, denial, or revocation of waste discharge requirements and permits pursuant to sections 13263 and 13377 of the Water Code . . ." The adoption of the proposed NPDES permit is an action pursuant to Water Code section 13377. Accordingly, the issuance of the proposed MS4 permit is not subject to the APA processes for rulemaking. Furthermore, the MS4 permit implements the existing requirements of the Clean Water Act and regulations promulgated by the United States Environmental Protection Agency.

Contrary to the argument that the permit is a "rule of general application," in adopting the exception set forth in Government Code section 11352, the Legislature recognized the unique nature of regional board waste discharge requirements and permits. The adoption of waste discharge requirements and permits constitutes an action that applies solely to the named dischargers who are subject to the permit. Moreover, the process that the boards follow to consider adopting a permit complies with legal notice, comment, and response requirements. Given the high volume of NPDES permits and Waste Discharge Requirements, and the comparatively cumbersome process under the APA's full rulemaking process (which can take a year or longer), it is easy to see that the Legislature intended to apply a more streamlined process to the adoption of permits and WDRs, that still provides full due process protections to all those concerned.

Finally, the State Board has previously dispensed with this same comment in its SUSMP Order (Order WQ 2000-11). There, it was determined that since the Regional Board tailored the permit requirements to the needs of the Los Angeles County; only the named permittees are governed by the permit; and they as well as any other interested persons have had ample opportunity to comment on the permit, that the permit issuance was exempt from the APA, pursuant to Government Code section 11352.

163. **Comment:** The Draft Permit fails to Provide a "Safe Harbor" provision for the Permittees. Comment also recommends language changes to provide such Safe Harbor and protect the Permittees from unwarranted third party suits.

Response: Provisions such as those suggested by the Commenter have previously been determined by the SWRCB to be acceptable. (See Order WQ 98-01) However, they were never, as the Commenter concedes, mandatory or required. In fact, in WQ 99-05, which amended WQ 98-01, the SWRCB prescribed the precise language that it directed be used by Regional Boards in the Receiving Water Limitations provision. Nowhere in that language does the "safe harbor" language appear. The Comment is a reiteration of an issue raised several times before to the regional boards and the SWRCB in several years of development of appropriate municipal stormwater permits by the regional boards and the SWRCB. The debate over the issue has included comment by environmental groups, municipal dischargers, industry representatives and the U.S. EPA.

The disadvantage of such provisions is that they have the effect of restricting the Regional Board's proper exercise of enforcement authority. The SWRCB's decision not to include the suggested language in its Order WQ 99-5 represents a deliberate effort to provide explicit guidance regarding this issue. Very recently, in its Order WQ 2001-15, regarding review of the San Diego's Regional Board's MS4 permit for part of Orange County, the SWRCB signaled yet again that the precise language prescribed in Order WQ 99-05 – no more and no less – is that which should be included in MS4 permit Receiving Water Language. There, following extensive analysis relating to the continued appropriateness of the language set forth in 99-05, the SWRCB, although it had a clear opportunity to do so, made no changes to the language such as that proposed by the commenter. It is also important to point out that the MS4 permit for part of Orange County adopted by the San Diego Regional Board does not contain such a provision. Nor does the current draft of the MS4 permit for Los Angeles County being considered by the Los Angeles Regional Board.

D. COMMENTS FROM RANCHO CUCAMONGA AND UPLAND (DATED MARCH 15, 2002)

164. **Comment:** Findings, Page 7, footnote 3. The proposed definition of Maximum Extent Practicable should be revised as follows:…….

Response: The proposed definition does not clarify the term anymore than the existing definition.

165. **Comment:** Finding 18-Pages 6-7. Delete "It is expected that once TMDLs and an implementation plan are developed, the stakeholders will cooperate and implement the plan." Replace with "Once the TMDL is approved by USEPA, this permit may be reopened to determine appropriate implementation measures."

Response: Please see the changes to this section of the draft. Proposed additional sentence need not be added as reopener provisions for TMDLs are already in Section XIX, Permit Expiration and Renewal.

166. **Comment:** Section III.3 – Discharge Limitations/Prohibitions – Page 17. Prohibiting discharges into an MS4 is beyond the Regional Board's authority. This section should be revised to omit the reference to "into the MS4".

Response: This provision requires the permittees to effectively prohibit the discharge of non-storm water to MS4 systems as required under 40 CFR 122.26(d)(2).

167. **Comment:** Section III - Discharge Limitations/Prohibitions – Page 17. This section should also include exemptions for "sidewalk rinsing," dewatering of lakes and decorative fountains," and "discharges originating from federal, state or other facilities which the Permittee does not have the jurisdiction to regulate."

Response: The discharge of rinsate from the cleaning of sidewalks associated with municipal, commercial and industrial areas, as well as, food service areas is strictly prohibited by the proposed permit (Section VI.6.e). Because of chemicals used to minimize biological activity in fountains and the high nutrient and pathogen concentrations in urban lakes, it is unlikely that these waters would be sufficiently low in pollutants to allow discharge to the local storm drain system. Finally, discharges from federal, state or other facilities which the permittees do not have jurisdiction to regulate are already exempted from the proposed permit. Please refer to Fact Sheet, Section IV, and Order, Finding 24, and Attachment 3.

168. **Comment:** Section III. Discharge Limitations – Page 18. The proposed Discharge Prohibitions omit an important exception which is "Discharges originating from federal, state or other facilities which the Permittee is pre-empted from regulating." This provision which has been approved by the State Board, should be included in the new Permit.

Response: Please refer to response to comments, Item 167, above.

169. **Comment:** Section III – Discharge Limitations/Prohibitions – Page 18. The Regional Board should add the following language Section III.0, "Compliance with this Order through the timely development and implementation of programs described herein shall constitute compliance with this prohibition." This provision which has been approved by the State Board, should be included in the new Permit.

Response: Please refer to response to comments, Item 163, above

170. **Comment:** Section IV – Receiving Water Limitations – page 20. At the end of this section, the following provision should be included:
Timely development and complete implementation of the DAMP and other requirements of this order shall satisfy the requirements of this section and constitute compliance with Receiving Water Limitations."

Response: Please refer to response to comments, Item 163, above.

171. **Comment:** Section VI.5(c) ,(d), (e), (h) and (I) – Legal Authority/Enforcement – Page 21. The inclusion of "etc." at the end of these sections is inappropriate for a formal document such as an NPDES permit and should be deleted.

Response: The language has been revised.

172. **Comment:** Section VI.6 – Legal Authority/Enforcement – Page 21. The Cities are concerned about the feasibility and enforceability of the new program for restaurant inspections which go far beyond the scope of the provisions of 40 CFR 122.26(d)(2)(iv)

Response: We disagree; this requirement is consistent with the MEP standard established for the MS4 discharges. Also, please note that 40 CFR 122.26(d)(2)(iv)(B) requires the permittees to detect and remove illicit discharges and improper disposals into the storm sewer.

173. **Comment:** Section VII.1 – Illegal Discharges/Illicit Connections – Page 22. The Cities are concerned that this provision is overbroad and should only require the "effective prohibition" of "illicit discharges."

Furthermore, the directive that illegal or illicit connections "shall be investigated and eliminated within 60 days of discovery and identification," appears to require a Permittee to actually eliminate such a connection itself, rather than direct or order the elimination of the connection by the responsible party.

Response: Please refer to the revised language. Please note that the requirement itself is consistent with 40 CFR 122.26(d)(2).

174. **Comment:** Section VII.2 – Illegal Discharges/Illicit Connections – Page 22. Substitute "hazardous substances" with hazardous materials which is a defined term in the Permit (see, page 52 of Attachment 4). We also believe that the imposition of these additional reporting obligations is infeasible and not authorized by exiting law.

Response: For purposes of spill response and reportable quantities, reference to hazardous substances is appropriate. See Section 311 of the Federal Water Pollution

Control Act and Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

175. **Comment:** Section VIII – Municipal Inspections of Construction Sites – Page 23. The Cities question the legality and practicability of the inspection program proposed by the Regional Board in the Permit. Specifically the cities we represent do not have the resources available to implement these additional inspection programs. Futhermore, many of the requirements of this provision may duplicate those found in the Statewide General Construction Permit which are already regulated by, and the responsibility of the Regional Board. If the Permit is adopted in April, it will not be feasible for the wet season inspections in Section VIII.3 to be conducted prior to May 31, 2002. The Cities recommend that the wet season inspections commence during the 2002-2003 wet season. Other concerns regarding deadline for inventory of construction sites, frequency of inspections and limited resources, and the ability for the cities to use limited resources to those sites which pose the greatest threat to water quality.

Response: Federal regulations require the permittees to control the discharge of pollutants from industrial, including construction sites. 40 CFR 122.26(d)(2)(i) states that the permittees must demonstrate that they have adequate legal authority to control "the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity," prohibit "illicit discharges to the municipal storm sewer," control "the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water," and "carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer." Please note that implementation and enforcement of the State's General Permits will continue to be the responsibility of the Regional Board. However, at a number of these sites, the daily changes in site conditions and practices and the potential for discharges from these sites to cause or contribute to exceedances of water quality objectives require this extra level of local inspection and enforcement.

With respect to lack of resources to implement the additional inspection provisions, we encourage the permittees to look into the cost saving and efficiencies in using existing inspection programs. The permit offers the cities the ability to prioritize these sites based on threat to water quality, and therefore utilize limited resources in a way that will result in maximum benefit.

Please refer to the revised schedules.

176. **Comment:** Section IX – Municipal Inspections of Industrial Facilities – pages 24-25. The new requirements for inspections of industrial facilities are overly prescriptive and

duplicative of those found in the Statewide General Industrial Permit, and exceed the inspection requirements prescribed by the Clean Water Act. Furthermore, the federal storm water regulations do not require Permittees to inspect all industrial and commercial facilities, or construction sites and the California Water Code does not authorize the Regional Board to require the Permittees to carry out this burdensome and inefficient process. The Permittees should be afforded the flexibility to develop and implement their own inspection program to identify problem facilities and report them to the Regional Board.

Additionally, the requirement that the Permittees provide training by July 1, 2003 may also be infeasible due to the limited financial resources of our cities.

Response: Federal NPDES regulation 40 CFR 122.26(d)(2)(i)(A) provides that each permittee must demonstrate that it can control "through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from site of industrial activity." These ordinances must be applied at all industrial sites to ensure that pollutant discharges to the MS4 are reduced to the maximum extent practicable and permit requirements are met. Furthermore, 40 CFR 122.26(d)(2)(iv)(C)(1) requires that municipalities "identify priorities and procedures for inspections and establishing and implementing control measures…" for discharges from industrial sites that the municipality determines are contributing a substantial pollutant load to the MS4. Regarding enforcement at industrial sites, the US EPA further states, "The municipality, as a permittee, is responsible for compliance with its permit and must have authority to implement the conditions in its permit. To comply with its permit, a municipality must have the authority to hold dischargers accountable for their contributions to separate storm sewers" (1992). Regional Board staff will work with the permittees to avoid duplicative efforts at industrial facilities regulated by the State.

We suggest coordination of the training programs with other permittees to take advantage of shared costs and resources. The annual reports from prior years indicate that most of the permittees have a well established program in place (e.g., Upland reported that 100%, and Rancho Cucamonga 31% of the facilities have been inspected). Considering this factor, we feel that the proposed schedules are reasonable.

177. **Comment:** Section X – Municipal Inspections of Commercial Facilities – page 26 and 27. The reporting obligations are infeasible and not authorized by existing law. California and federal statutes clearly impose reporting obligations on the polluter, not cities.

Response: The draft order requires the permittees to notify all spills and leaks that may pose an immediate threat to human health or the environment. This is critical to protect public health and the environment. Please note that the other reporting

requirements are necessary to determine compliance with the MS4 permit, including the MEP standards.

178. **Comment:** Section XII – New Development (Including Significant Redevelopment) – page 29. The Draft Permit is placing the emphasis on land use rather than simply requiring the Permittees to reduce the discharge of pollutants to the MS4 to the maximum extent practicable.

Response: Urbanization and pollutant discharge have a cause and effect relationship. Urbanization without consideration of environmental impacts will be a violation of the California Environmental Quality Act (Public Resources /Code Section 21000(g)). The federal storm water regulations at 40 CFR 122.26(d)(2)(iv)(A)(2) also require the permittees to consider storm water issues in the comprehensive planning process. For an effective program, environmental impacts must be considered and control measures must be identified in the planning stages.

179. **Comment:** Section XII.A.1 – A.2 – New Development (Including Significant Redevelopment) – Page 29. With the delay of the hearing for this Permit, the target date of July 1, 2002 is not reasonable. The Cities recommend that these tasks be completed within 365 days from the date of adoption of the new Permit.

Response: Most of the permittees are already implementing this requirement. However, the date has been revised to provide adequate time from the date of adoption of this order for the permittees to review and determine the adequacy of the current program.

180. **Comment:** Section XII.A.6 – New Development (Including Significant Redevelopment) – Pages 30 and 31. The Regional Board does not have the legal authority to review or approve proposed updates or amendments to General Plans and the Permittees should be provided the flexibility.

Response: The draft order requires the permittees to review their planning procedures and CEQA document preparation processes to ensure that storm water-related issues are properly considered and addressed. The permittees have the flexibility to propose their own programs to address storm water-related issues. As indicated above (Comment # 178), for an effective storm water program, environmental issues must be considered in the planning stages of all projects. Because land use planning and zoning are where urban development is conceived, it is the phase to identify cost-effective control measures. Government Code Section 65350 et seq., require public notification of amendments and changes to the General Plan. The permit requires that a copy of those amendments or changes be submitted to the SARWQCB.

181. **Comment:** Section XII.B(3) – New Development (Including Significant Redevelopment) – Page 32 – The WQMP should not be based on, or require the same categories as the SUSMP. The Permittees should not be required to implement the structural BMPs found in the SUSMP as they were not developed with the regional considerations of San Bernardino County and are not flexible or site-specific. (See 64 Fed. Reg. At 68722 where EPA has not proposed a stringent definition for MEP, but instead promotes "maximum flexibility" in MS4 permitting.) SUSMPs are not the only way for the Permittees to satisfy the requirement of the CWA which requires MS4 applicants to propose a management program to "develop, implement, and enforce controls to reduce the discharge of pollutants from MS4s which receive discharges from areas of new development and significant redevelopment." 40 CFR 122.26(d)(2)(iv)(A)(2).

Response: The draft Order provides flexibility to the permittees to develop regional water quality management plans. The Order also provides some standards that must be met in developing these water quality management plans. These standards, as specified in the draft Order, are considered as MEP standards (please refer to the Memo from the State Board's Chief Counsel dated December 26, 2000 and State Board Order No. WQ 2000-11)

182. **Comment:** Section XII.B(3) – New Development (Including Significant Redevelopment) – Page 32. We believe that the Regional Board has limited authority to prescribe BMPs to incorporate specific design criteria as to how MEP is to be achieved. While the Regional Board is the permitting agency, its authority is limited and the Permittees have broad discretion under Section 13360(a) of the California Water Code to "comply with the order in any lawful manner."

Response: The draft order specifies a design criteria for a specific kind of structural BMP. However, the order also provides options for other alternatives. The draft MS4 permit does not violate the restriction in Water Code section 13360 on the Regional Board identifying the "design" or "particular manner" in which a permittee shall comply with the permit. Water Code section 13360 restricts the Regional Board from specifying the manner of compliance with the permit. Specifically, the Regional Board may not specify the "design" or "particular manner in which compliance may be had." (Water Code, Section 13360.) At the same time, Water Code section 13377 provides that, notwithstanding section 13360, the Regional Board shall issue waste discharge requirements "which apply and ensure compliance with all applicable provisions of the [Clean Water Act]."

D. RESPONSE TO COMMENTS ON THE COMMENTS FROM THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT (DATED MARCH 14, 2002):

183. **Comment:** Finding 2. Reference to the "San Bernardino Transportation/Flood Control Department" should be changed to the "San Bernardino County Flood Control District." The San Bernardino County Flood Control District is the Principal Permittee.

Response: Language changed.

184. **Comment:** Finding 3. Reference to the "San Bernardino County Department of Public Works" should be changed to the "San Bernardino County Flood Control District." The San Bernardino County Flood Control District is the Principal Permittee.

Response: Language changed.

185. **Comment:** Finding 12. Revise footnote to clarify that runoff from National Forests is not urban runoff. Add "National Forests" and "state and federal properties" to the examples of where the permittees may lack legal jurisdiction. This makes it clear that the lack of jurisdiction extends beyond facilities.

Response: The state and federal facilities referenced in this finding includes national forests and other state and federal properties.

186. **Comment:** Finding 14. It should be clarified that a major portion of the San Bernardino County in the Santa Ana River Basin area is being urbanized. Most of San Bernardino County remains (in the Lahontan and Colorado Region) unurbanized and will remain so for years to come.

Response: Clarification made as recommended.

187. **Comment:** Finding 20. Footnote 3 is inconsistent with the definition of MEP in Attachment 4 to the permit. Footnote 3 is more consistent with the definition of MEP than the lengthy discussion in Attachment 4.

Response: MEP definition in Attachment 4 has been changed to be consistent with the footnote.

188. **Comment:** Finding 24. It should be clarified that if any agency listed in Attachment 3 is determined to cause or to contribute to violations of this order, then the RWQCB will require them to 1) secure an NPDES permit or 2) become a permittee under this permit if acceptable to the existing permittees and subject to execution of the implementation agreement.

Response: Existing language has been further clarified.

189. **Comment:** Section I. Responsibilities of the Principal Permittee

- This section should be revised to clearly distinguish the responsibilities of the Principal Permittee when 1) acting on behalf of the area-wide program and 2) when acting as the SBCFCD. Item numbers 2, 5, 6, 7, 12, 18 pertain to the principal permittee when acting as the SBCFCD. The remaining items pertain to the principal permittee when managing the overall storm water program.

- The following language should be added, "In addition, the activities of the principal permittee shall, at a minimum, include the following for MS4 systems owned and operated by the SBCFCD:"

  Response: Please refer to the changes in the March 22, 2002 draft.

190. **Comment:** Section I.12. The word, "physical", should be deleted as it is overly suggestive of manual removal by public agency forces as opposed to removal via enforcement authority. Please see comments II.11 regarding the word "ensure".

  Response: Please refer to the revised language.

191. **Comment:** Section II.2 Responsibilities of the Co-permittees
The July 1, 2002 deadline should be extended for the co-permittees to evaluate their ordinances regarding administrative fines. The deadline for adoption of ordinances, which provide the co-permittees the ability to impose and collect fines administratively, should also be established. Suggested deadlines: July 1, 2003 for evaluation of ordinances and July 1, 2004 for effective date of new ordinances.

  Response: Deadline for ordinances to be in place has been adjusted to provide adequate lead time from permit adoption date.

192. **Comment:** Section II.6. Clarification should be made that the notification for changes in a co-permittee's designated representative to the Management Committee must be made in writing to the principal permittee.

  Response: Clarification made as recommended.

193. **Comment:** Section II.11 (Typical comment, applies throughout permit). The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. For example, the co-permittees can "prohibit" illegal discharges through ordinances and they can take appropriate "enforcement actions" against violators, but they cannot "ensure" that illegal discharges do not occur. Permit Item VI.2 spells out appropriate actions for the co-permittees. This issue here is similar to the posting of speed limits and enforcement of posted speeds. Some recalcitrant drivers will speed and can be ticketed, fined, and in rare instances, jailed for

violations of posted speeds, but short of taking control of vehicles, the police can not "ensure" that drivers don't exceed the speed limit.

Response: Please refer to the revised language.

194. **Comment:** The word, "physical", should be deleted as it is overly suggestive of manual removal by public agency forces as opposed to removal via enforcement authority.

Response: Please refer to the revised language.

195. **Comment:** Section III. 3 Discharge Limitations/Prohibitions
The following exemption should be added: "Discharges from BMPs implemented in accordance with this permit or an approved WQMP."

Response: It is anticipated that discharges referenced here are storm water containing no significant amount of pollutants. Please note that the proposed Order regulates urban storm water runoff and an exemption is not needed under this permit for the discharge of storm water.

196. **Comment:** Section IV. Receiving Water Limitations
The language is not word-for-word the same as specified in Order No. WQ 99-05, which was the negotiated language. Even though there are very minor changes, these changes do alter the intent of the negotiated language.

Response: Additional language is provided for clarification and does not modify the intent of the negotiated language or the legal effect of the negotiated language.

197. **Comment:** Section IV.2. The acceptable description of a process for compliance with receiving water limitations or violations of the order is the description included in the negotiated language of Order No. WQ 99-05. The recently inserted language is suggestive of an "iterative process" outside that anticipated Order No. WQ 99-05. Therefore, the new language should be deleted and the State Board's language in Order No. 99-05 should be used.

Response: The iterative process included the draft Order only clarifies the process described in State Board Order No. WQ 99-05 and is consistent with Order No. 2001-15.

198. **Comment:** Section IV.3. The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised terminologies.

199. **Comment:** Section V. Implementation Agreement: The deadline for annual Implementation Agreement evaluations should be revised to July 1, 2002, so that the evaluation is accomplished on a fiscal year basis and duly reported in the Annual Report.

Response: Language changed as recommended.

200. **Comment:** Section VI.3 Legal Authority/Enforcement:: The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised terms.

201. **Comment:** Section VI.5. The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised language.

202. **Comment:** Section VI.5e. This listing suggests that the permittees will need to prohibit or develop BMP programs to control the washing of residential streets, sidewalks, driveways, and patios. This will not only be problematic, but impossible to enforce. However, in commercial and industrial areas, controls for these activities are appropriate.

Response: Comment noted.

203. **Comment:** Section VI.5.e. Later part of the sentence structure is confusing. It is not clear what this provision is addressing. Is it addressing the use of chemicals to wash the specified areas or is it focused on requirements for the washing of areas containing chemicals?

Response: The discharges from these types of washing operations should not contain chemicals that could have an adverse impact on water quality. If a chemical is used in the washing operations, or if chemicals are washed off (from a spill, leak, etc.) from the surface, the wash water should not be discharged to the storm drains.

204. **Comment:** Section VI.6. The deadline for development of the restaurant inspection program is too soon. Suggested deadlines: July 1, 2003 for development of the restaurant inspection project.

Response: Please see the revised schedules.

205. **Comment:** Section VII. Illegal Discharge/Illicit Connections; Litter, Debris and Trash Control: The language in this section needs to be tightened up. The terms "trash" and "litter" adequately describe the anthropogenic materials that this item should appropriately target. The introduction of the term "debris" is unclear and should be deleted as "debris" is commonly used to refer to materials that wash down from forest areas naturally and following wildfires, materials that naturally replenish stream sediment loads and balance stream erosion. As such, "debris" includes primarily non-anthropogenic materials.

Response: Debris has been defined in Attachment 4. Although the term could refer to non-anthropogenic materials, it is also used for materials originating from human activities. For purposes of water quality protection, the sources of debris whether anthropogenic or not is of less importance; how the debris is managed is the critical factor.

206. **Comment:** Section VIII.1 Municipal Inspections of Construction Sites
The date to develop the inventory of construction sites is too soon. Suggested deadlines: July 1, 2003 for development of the construction database system and September 1, 2003 to begin populating the database. Updates, by fiscal year, can then be reported in the Annual Report.

Response: The annual reports from prior years indicate that most of the permittees already have an inventory of construction sites. Some changes have been made to the deadline to provide adequate time for all permittees to comply with this requirement.

207. **Comment:** Section VIII.3.a. The reference to the 2001-2002 wet season should be deleted and replaced with the 2002-2003 wet season.

Response: Language changed as recommended.

208. **Comment:** Section VIII.3.b. The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised language.

209. **Comment:** VIII.6. The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11. The deadline for training staff is too soon given the expanded

extent of the training. Suggested deadline: September 1, 2003 for training construction inspection staff.

Response: Please refer to the revised language. The deadline for training construction inspection staff has been changed to require completion prior to start of inspection of prioritized sites and a the same time meet the ROWD commitment of holding refresher MAPPS training once per year.

210. **Comment:** IX.9 Municipal Inspections of Industrial Facilities
The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised language.

211. **Comment:** Section XII. New Development (Including Significant Re-DevelopmentXII.A.4). The word "existing" from the phrase "runoff from new and existing industrial sites" should be deleted, since this section deals with new development.
Response: Deleted as recommended.

212. **Comments:** Section XII.A.7. The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised language.

213. **Comment:** Section XII.A.10. The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised language.

214. **Comment:** Section XII.B.1.d. Clarification for status of Retail Gasoline Outlets should be made, especially those that sell fuel and conduct vehicle testing and repair.

Response: These are covered under the Section X.B.1.c for industrial/commercial developments 100,000 square feet or more. Facilities smaller than this should be required to comply with the routine structural and non-structural BMPs specified in the New Development Guidelines or other requirements developed by the permittees.

215. **Comment:** Section XII.B.3.a. The "24-hour storm" does not make sense hydrologically. Storms have durations of varying length, from a few minutes to hours to multiple days. In Option 2 – the URQM procedure is not based on the fictitious "24-hour storm," but rather a continuous simulation model. Therefore, it is suggested that reference to the "24-hour storm" be dropped, and go with the 85th percentile event in Option 1 (24-hour interval period could be specified). Option 4 is a confusing restatement of Option 1 and therefore it should be deleted.

Response: We agree that the storm events have varying duration. The term "24-hour storm" is a widely used terminology to denote the storm intensity during a 24-hour period. Please note that the Los Angeles SUSMP requirements which contained this requirement was upheld on appeal by the State Board. See State Board Order No. WQ 2000-11.

216. **Comment:** Section XII.B.3.b. Option 3 is a confusing restatement of Option 2 and therefore it should be deleted.

Response: These requirements are different and the references included here should provide additional clarification.

217. **Comment:** Section XIII.1 Public Education and Outreach
The deadline for public awareness survey is too early. It should be extended to July 1, 2003.

Response: Please see the revised schedules.

218. **Comment:** Section XIII.6 This item should be deleted and replaced with the following: "By September 1, 2003, the permittees shall complete an evaluation of business education and outreach methods suitable for assisting with implementation of programs required by this permit."

Response: The language in the proposed Order requires the permittees to determine the best method for distributing educational and General Industrial Permit materials to businesses within their jurisdiction. The requested changes do not accomplish the same task.

219. **Comment:** Section XIV.1 Municipal Facilities/Activities
The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. See discussion under II.11.

Response: Please refer to the revised language.

220. **Comment:** Section XIV.3. The deadline for this item should be extended to July 1, 2003. This item requires the cooperation of an organization that is not a permittee under this permit, and as such, is overly restrictive. The item should be deleted as the permit already has sufficient language regarding non-storm water discharges.

Response: Please see the new schedules. This requirement specifically deals with discharges from fire-fighting and is not addressed elsewhere.

221. **Comment:** Section XIV.4. The deadline for this item should be extended to July 1, 2003. The reference to the annual report should be changed to 2002-2003 annual report.

Response: Please see the revised deadlines.

222. **Comment:** Section XIV.11. The listing of agency organizations is confusing, as there is similar language in Finding 24 and Attachment 3. This item must be written clearly to distinguish between departments, divisions, and bureaus within a permittee's agency (clearly these are covered by the permit and language to emphasize said fact is appreciated) and agency organizations that are not permittees, such as those listed in Attachment 3. The permittees have little, if any, control over non-permittee public agencies and organizations. Please clarify that if any agency listed in Attachment 3 is determined to cause or to contribute to violations of this order, then the RWQCB will require them to 1) secure an NPDES permit or 2) become a permittee under this permit if acceptable to the existing permittees and subject to execution of the implementation agreement. Also, the Transportation Department is now a part of Department of Public Works in the organizational chart for San Bernardino County.

Response: This item refers to coordination with various departments within a permittee's jurisdiction and intergovernmental (between cities, City and the County, etc.) coordination. These kind of coordination and cooperation are needed to have an integrated storm water program. This may be one way to reduce program costs by avoiding duplicative efforts. Impact on the regulated community will also be minimized if the same inspectors that already conduct construction, industrial or restaurant site inspections also evaluate compliance with storm water ordinances.

223. **Comment:** Item XVI. Program Management
The evaluation of the MSWMP should be revised to be included in the annual report each year.

Response: Language revised as recommended.

224. **Comment:** Item XVII. Fiscal Resources
The "November 15" date should be deleted and revised to state that the fiscal analysis shall be included in the annual report each year.

Response: Please refer to the revised language.

225. **Comment:** XVIII.1 Provisions: This item speaks to public notices that will be placed by the Regional Board. As such, it is understood that this item is included for permittee informational purposes only.

Response: Noted.

226. **Comment:** Section XVIII.4. The last sentence, "In addition to those specific controls…by this Order", should be deleted. This sentence contradicts and is redundant with the provisions in IV - Receiving Water Limitations.

Response: This was added at the request of the California Department of Health Services and the local vector control agencies.

227. **Comment:** Section XIX.1 Permit Expiration and Renewal
The expiration date should be revised to be consistent with the date five years following adoption of the order.

Response: Expiration date revised to April 27, 2007.

228. **Comment:** Map of Permit Area
The map should be drawn to also show exclusion of National Forest from within the permitted area.

Response: No change necessary; please note that this is a map of the whole drainage area.

229. Comment: Attachment 3
See the comment on Finding 24.

Response: A footnote has been added to reflect the relationship of this list with Finding 24.

230. **Comment:** Attachment 4 There is no reference made to Attachment 4 in the text of the permit.

Response: Attachment 4 is a glossary of the terms used.

231. **Comment:** Definition of MEP. The emphasis on "technical feasibility" in the definition by Jennings is inappropriate, as it is not supported by CWA. Other items are important, including pollutant removal effectiveness, safety, and costs. MEP is a balancing act, and the artificial insertion of special emphasis outside of sound backing from the CWA is

inappropriate. Reference to the Jennings definition should be deleted. Also, see comment for Finding 20.

Response: MEP definition in Attachment 3 has been revised to be consistent with the footnote referenced in the finding.

ORDER NO. R8-2002-0012, SBC MS4 PERMIT
RESPONSE TO COMMENTS ON THE MARCH 22, 2002 DRAFT

A. E-MAIL COMMENTS FROM THE CITY OF REDLANDS, DATED MARCH 28, 02

1. **Comment:** Page 17 of 67, sub-paragraph 10. Responsibilities of the Co-Permitees:
Please define "respond". If it means to actually respond to spills, and discharges that may consist of hazardous substances, then additional language should be added to the pages discussing inspector training criteria (Page 26 of 67, sub-paragraph 9)

If responding to hazardous substances, Hazardous Materials Operations First Responder Awareness, or even First Responder Operation may be required. This is a concern due to the definition of a hazardous substance as interpreted by OSHA in 29 CFR.

Response: Please see revised language. The revised language allows the co-permittees to arrange for responding to emergency situations requiring specialized training if it does not have appropriately trained staff to respond to such situations. The need for appropriate training and the training requirements are specified elsewhere (Please see California Code of Regulations, Title 8). Pursuant to Title 8, California Code of Regulations, Sections 3203 and 5192, the employer must ensure appropriate level of training for its employees consistent with the level of occupational hazard expected to be encountered as part of their assigned duties. This permit does not attempt to repeat the training requirements for hazardous waste or other type of inspectors.

2. **Comment:** There is a "typo" on page 22 of 67, (January 31, 20032). Same typo on page 63.

Response: Corrected.

B. COMMENTS FROM DEFEND THE BAY AND THE NATIONAL RESOURCES DEFENSE COUNCIL (NRDC) – DATED APRIL 8, 2002

3. **Comment:** Receiving Water Limitations (Section IV.3): In response to comments from the San Bernardino County Flood Control District, the Regional Board has changed paragraph 3 of the receiving water limitations to state that the "permittees shall **demonstrate** compliance…" rather than the "permittees ***shall assure compliance***…" The State Board has addressed this… Please replace the original language so as to be consistent with State Board Order 99-05.

Response: The revised draft has the language consistent with State Board Order No. 99-05 and recommended by the commenter.

4. **Comment:** New Development(Section XII): Paragraph A.7. The Draft permit now requires the permittees to "***confirm*** that these principles and policies are properly considered and incorporated into [General Plan and related documents.]" In this case, again, the original language should be replaced so that the Permit states that the permittees must "***ensure*** that these principles… are incorporated into these documents."

This is not the case in which the permittess are unable to "ensure" that this Permit requirement can be met. The permittees, as cities and counties, can ensure that the appropriate language is put into their General Plan documents. Thus the original language should be replaced…

Response: The revised draft has the language recommended by the commenter.

5. **Comment:** New Development(Section XII): The definition of "significant re-development" has been improved to include "the addition or creation of 5,000 or more square feet of impervious surfaces" which does encompass the replacement of impervious surfaces on the site, as directed by the State Board in Order 2000-11. However,… still leaves out the clarifying language from Order 2000-11….which states…"Redevelopment includes, but is not limited to, the expansion of a building footprint or addition or replacement of a structure; structural development including an increase in gross surface floor area and/or exterior construction or remodeling; replacement of impervious surface that is not part of a routine maintenance activity; land disturbing activities related with structural or impervious surfaces."…As the State Board's language makes clear, replacement of a structure is included.

Response: We believe that the current language in the permit is consistent with the Chief Counsel's December 26, 2000 letter to the Regional Board Executive Officers that explained State Board Order WQ 2000-11. Item 2 of this letter states, in part, "Redevelopment projects that are within one of these categories are included if the redevelopment adds or creates at least 5,000 square feet of impervious surface to the original developments".

6. **Comment:** Legal Authority/Enforcement (Section VI.5): …We urge the Regional Board to either delete the entire alternative to prohibiting the non-storm water discharges contained in the parenthetical of paragraph 5, which would be most consistent with the Clean Water Act, or in the alternative, at the very least replace the new language in this draft with the language that was in the previous draft (and that is also found in the Orange County MS4 Permit). This language stated that the "permittees may propose appropriate control measures in lieu of prohibiting these discharges, ***where the permittees are responsible for***

ensuring that dischargers adequately maintain these control measures*."* Because the Clean Water Act requires that non-storm water discharges be prohibited, it is not enough to merely require that the permittees ***monitor*** those control measures. The permittees must ***require and ensure*** that those control measures are maintained so that the discharges do not get into the storm sewers…

Response: Please refer to the revised language.

7. **Comment:** Definition of MEP: This Draft Permit deletes the entire full definition for MEP in the definitions section of the permit, which was based on a memo written by the State Board. …the Regional Board has replaced it with an inappropriate and arguably illegal definition that was contained in a footnote in previous drafts (to which we also objected). ….we again suggest the following definition of MEP, which is relatively simple and consistent with the law, from the Los Angeles County Permit:

   MEP means the standard for implementation of storm water management programs to reduce pollutants in storm water . CWA section 402(p)(3)(B)(iii) requires that municipal permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. Specifically, municipalities must choose effective BMPs, and reject applicable BMPs only where other effective BMPs will serve the same purpose.

   Response: Definition changed as suggested.

   COMMENTS FROM RICHARDS/WATSON/GERSHON, DATED APRIL 8, 2002

8. **Comment:** We disagree with the Regional Board's Response 162 to compliance with the Administrative Procedures Act ("APA"). Specifically, the Cities believe that the failure by the Regional Board to institute formal rulemaking early in the process will leave open a basis for attacking the Permit, once adopted, on the ground that the Regional Board failed to comply with the APA.

   Response: Comments noted; we believe that this issue has been intensely debated and the State Board decision on this matter and other related regulations were discussed in our earlier response (Item 162).

9. **Comment:** The Tentative Draft Fails to Provide a "Safe Harbor" Provision for the Permittees. While the Cities appreciate the Regional Board's comments in Response 163, we disagree with the Regional Board's position that "The disadvantage of such provisions is that they have the effect of restricting the Regional Board's proper exercise of enforcement authority."…We also disagree with the Regional Board's interpretation of WQ 99-05 and WQ 2001-15 that these State Board Orders prohibit the Regional Board from including a safe harbor provision in the Tentative Draft.…A "Safe Harbor" provision would provide the Cities and the permittees with important protections from third-party liability once they have implemented the storm water management programs prescribed in the Tentative Draft…

   Response: Comments noted; we believe that we have adequately addressed this issue in our earlier response (Item 163).